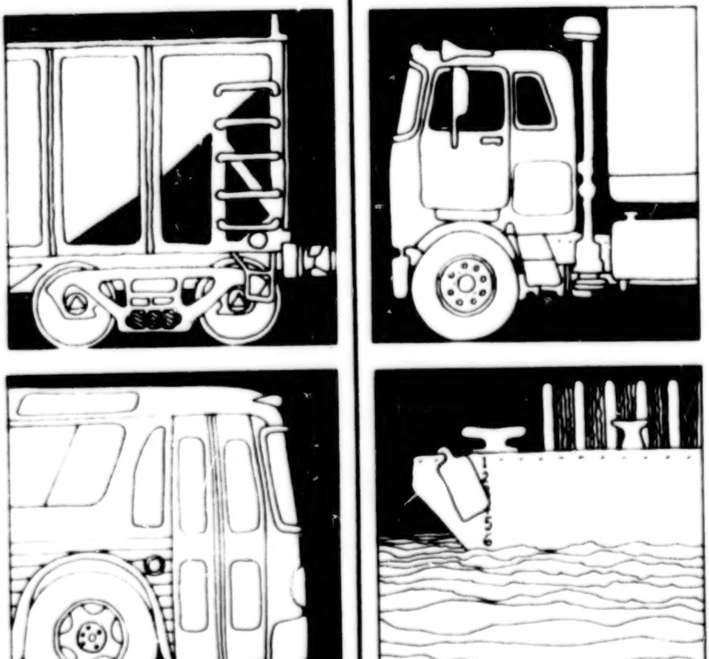
ICC83

Interstate Commerce Commission

1983 Annual Report



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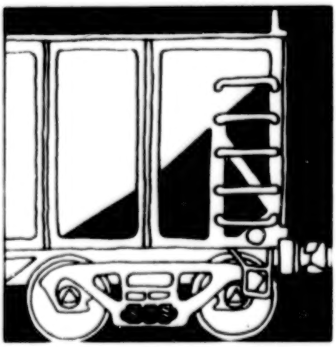
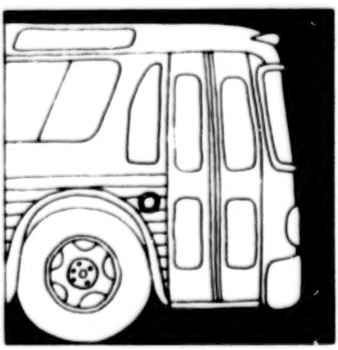




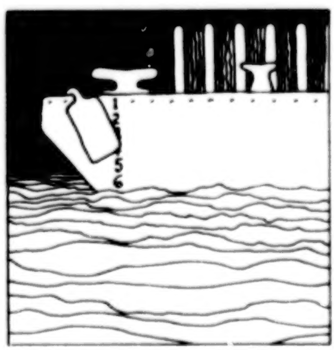


TABLE OF CONTENTS

LETTER OF TRANSMITTAL

To the Congress of the United States

Washington, D.C., April 4, 1984

It is my pleasure to submit the ninety-seventh Annual Report of the Interstate Commerce Commission, in accordance with the Interstate Commerce Act.

The report generally embraces the fiscal year ended September 30, 1983, except in the discussion of significant actions that transcend the 12-month period or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the 1983 fiscal year appears in Appendix D.

Reese H. Taylor, Jr.
Chairman

THE COMMISSION

(As of September 30, 1983)

	Appointed	Term Expires Dec 31
Reese H. Taylor, Jr., Chairman (R) Nevada	1981	1983
Malcolm M. B. Sterrett, Vice Chairman (R) Maryland	1982	1987
Frederic N. Andre (R) Indiana	1982	1987
Heather J. Gradison (R) Ohio	1982	1988

Reginald E. Gilliam, Jr., resigned as a member of the Commission on February 1, 1983. J. J. Simmons, III, resigned as a member of the ICC on February 28, 1983, after his confirmation as Under Secretary of the Department of the Interior. Commissioner Malcolm M. B. Sterrett was elected Vice Chairman on January 6, 1983.

As of September 30, 1983, the agency had three Commissioner vacancies.

Chairman Taylor

Vice Chairman Sterrett

Commissioner Andre

Commissioner Gradison

Functions and Responsibility

The Interstate Commerce Commission is an independent Federal agency responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the Commission attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 30,660 for-hire companies providing surface transportation in the U.S. These companies include railroads, trucking firms, bus lines, water carriers, one coal slurry pipeline, freight forwarders, and transportation brokers.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC was formerly authorized to have 11 Commissioners, each with a seven-year term of office. However, in August 1982 the Congress passed, and the President signed into law, legislation which reduced the ICC's strength from 11 to seven Commissioners as of January 1, 1983, and which will reduce that number even further—from seven to five Commissioners—as of January 1, 1986. Those persons appointed to be Commissioners on or after January 1, 1984, are authorized to serve only five-year terms. As fiscal year 1983 came to a close, the ICC had a complement of four Commissioners.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authorities to the Commission's 14 offices and bureaus.

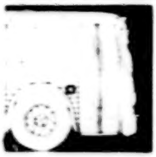
As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental agencies. In addition, the Chairman is generally responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and
4. Development and utilization of effective, expert staff support for the fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission or assumes the Chairman's duties under such conditions as absence or illness. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, or discipline of Interstate Commerce Commission practitioners.

During fiscal year 1983, the Commission's activities were carried out through an organizational structure consisting of the agency's 14 offices and bureaus, as follows:

- Office of the Managing Director—manages the Commission's day-to-day operations.



- Office of the General Counsel—renders legal opinions to the Commission, and defends Commission decisions challenged in court.
- Office of the Special Counsel—represents the interests of the general public in proceedings before the ICC.
- Office of the Legislative Counsel—analyzes legislative proposals; assists in the development of the Commission's own legislative proposals; aids Congress in the drafting of legislation; and assists in the preparation of testimony to be presented before Congressional committees.
- Office of the Secretary—serves as the Commission's documentation center, and is responsible for the issuance of the Commission's decisions and other legal documents.
- Office of Hearings—staffed by Administrative Law Judges, this office conducts the Commission's hearings.
- Office of Proceedings—processes formal ICC cases pertaining to operating rights, financial matters, rates, and competitive practices.
- Office of Transportation Analysis—conducts economic and statistical analyses relative to the transportation industry, regulation, and specific Commission proceedings, and provides economic advice to the Commission upon need or request.
- Office of Compliance and Consumer Assistance—closely monitors the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to ensure compliance with ICC policies, and assists the public in the resolution of complaints against ICC-regulated companies.
- Office of Public Affairs—furnishes information to the general public and the media concerning ICC decisions and activities, and conducts briefings for the media and U.S. and foreign visitors.
- Office of Governmental Affairs—assists Members of Congress and other representatives of the 50 states with matters pertaining to the work of the Commission.
- Small Business Assistance Office—functions as a clearing house for the resolution of small-business problems relative to surface transportation regulation, and advises the Commission on the nature and status of any such problems.
- Bureau of Accounts—concerned with the accounting aspects of economic regulation, this office prescribes uniform accounting rules, reviews various financial reports, and conducts audits of the pertinent records of transportation firms.
- Bureau of Traffic—monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they may become effective.

YEAR IN REVIEW

1982

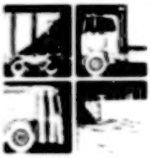
October 1	ICC proposes modifications to rail abandonment regulations.
October 7	ICC launches third series of independent trucker training conferences.
	Commission eliminates finance board, and provides for rail securities applications to be decided by Commission's review board.
	ICC adopts a methodology for indexing the operating revenues of motor carriers of property for classification purposes.
October 18	ICC issues decision on reciprocity of Canadian motor carrier entry into U.S.
October 20	ICC approves the consolidation of Union Pacific, Missouri Pacific, and Western Pacific Railroads.
October 22	ICC sets buy-in price to enable Chicago & North Western Railroad to serve Wyoming's Powder River Basin coal fields.
November 1	ICC's Office of Proceedings consolidated for efficiency into two sections based on mode of transportation regulated.
November 4	ICC issues final rules governing rail transportation contracts.
November 5	ICC proposes to exempt miscellaneous agricultural commodities from economic regulation.
November 9	ICC eliminates motor carrier detention rules.
November 10	ICC amends owner-operator leasing rules.
November 12	ICC issues report on surcharges and joint-rate cancellations since enactment of the Staggers Rail Act of 1980.
November 18	ICC issues railroad revenue adequacy determinations for 1981.
November 19	Bus Regulatory Reform Act of 1982 is implemented.
	ICC adopts new rules for review of state regulation of intrastate rates, rules, and practices of interstate bus carriers.
	Commission adopts new rules governing applications for operating authority by motor passenger carriers.
November 29	ICC modifies motor carrier leasing rules to allow private carriers to trip-lease to authorized carriers.
December 9	ICC reduces reporting burden for motor carriers of household goods.

December 10	ICC requires reciprocal switching by Conrail at Philadelphia as necessary for provision of competitive rail service.
December 13	ICC issues 1982 cost recovery percentage figure.
December 17	ICC issues final 1982 report on Uniform Railroad Costing System.
December 20	ICC issues first quarterly railroad revenue index decision.
December 22	ICC adopts final regulations concerning discontinued commuter service notices by the new Amtrak Commuter Service, Inc.
	ICC-approved consolidation of Union Pacific, Missouri Pacific and Western Pacific railroad is consummated, thus creating the nation's third largest railway system.

1983

January 6	Commissioner Malcolm M. B. Sterrett elected Vice Chairman.
	ICC eliminates "special circumstances" doctrine in rail-affiliate applications for motor carrier authority.
	Commission adopts policy to establish parity between rail-affiliated motor carriers and general motor carriers in licensing of new motor carrier operations.
January 7	ICC adopts methodology for indexing the annual operating revenues of railroads for classification purposes.
January 8	ICC proposes class exemption for motor carrier financial transactions.
January 17	ICC issues update on computation of owner-operator fuel reimbursement figure.
January 25	ICC issues notice decreasing level of owner-operator fuel reimbursement.
January 26	ICC adopts depreciation accounting for railroad track structure.
January 31	ICC seeks public comment on implementation of Uniform Railroad Costing System.
February 1	Vice Chairman Reginald E. Gilliam, Jr., resigns.
	ICC adopts final procedures for compensation of Amtrak for use of its Northeast Corridor properties by commuter and freight operators.
February 8	ICC reiterates special emergency procedures for use during work stoppages.

February 9	ICC proposes deregulation of railroad frozen food traffic.
February 24	ICC issues proposed guidelines for prescription of maximum reasonable rates for captive coal traffic.
February 28	Commissioner J. J. Simmons, III, resigns upon his confirmation as Under Secretary of the Department of the Interior.
	ICC announces forced-sale procedures for bankrupt railroad lines.
March 3	ICC releases media advisory stating that export coal and rail boxcar traffic will be exempted from further economic regulation.
March 4	ICC deregulates rail movement of farm products except grain, soybeans, and sunflower seeds.
March 7	ICC issues rules effectively exempting all rail carriers from long-and-short-haul ratemaking restrictions, subject to certain conditions.
March 9	ICC issues final policy statement on National Motor Freight Classification revisions.
	Commission proposes revision of railroad revenue adequacy standards.
March 15	ICC tentatively finds unlawful the publication by classification rate bureaus of items not directly related to classifications.
March 18	ICC issues second quarterly railroad revenue index decision.
	Commission adopts new rules for disclosing related-party transactions.
March 23	ICC eliminates extraneous recordkeeping requirements pertaining to railroad property.
March 24	ICC issues interpretation concerning rate of return on property used in subsidized railroad service.
March 25	ICC issues summary of 1,728 new railroad rate contracts.
April 4	Miscellaneous agricultural commodity exemption becomes effective.
April 12	ICC announces availability of Uniform Railroad Costing System for regional unit cost and movement costing programs.
April 15	Rail liquid iron chloride exemption becomes effective.
April 22	Final rules governing division of revenues on joint rail rates become effective.
May 2	ICC exempts boxcar traffic from all but car-hire, car-service regulation.



May 6	ICC proposes expansion of zone of rate freedom (ZORF), from 10 to 15 percent, for motor carriers of property.
	Commission proposes simplified tariff-filing requirements.
May 17	ICC begins series of 11 passenger bus seminars.
May 20	ICC announces availability of the Uniform Railroad Costing System publications, files, programs, and working papers.
	Commission reports on the agency's data-reduction achievements.
May 23	ICC initiates data-collection phase of User Fee Cost study.
May 24	ICC eliminates certain rail securities regulations.
May 26	ICC modifies final rules exempting wood products from railroad contract equipment-limitation provisions.
	Commission exempts from regulation rail movements of coal destined for export.
	ICC permits railroad contracts to become effective immediately.
May 27	ICC waives tariff-filing requirements for motor contract carriers of property.
	Commission issues proposed policy statement relative to licensing of contract carriers on industry-wide basis.
June 1	ICC modifies regulations for discontinuance or change of railroad or ferry service.
June 6	ICC issues final rules eliminating and modifying certain railroad securities regulations.
June 7	ICC proposes exemption of certain motor carrier transactions.
June 9	ICC issues decision exempting from regulation rail movements of coal destined for export.
June 13	ICC proposes simplified procedures for offers of financial assistance for rail lines subject to abandonment.
June 15	ICC postpones annual updating of rail car-hire prescription rates.
	Commission issues interpretation on allowable expenses on Virginia's subsidized railroad lines.
	ICC proposes change in maximum revenue/variable cost ratio for rates on non-ferrous recyclables or recycled materials.

June 20	ICC proposes an "All Inclusive Index" of railroad costs.
	Commission approves sale of the bankrupt Chicago, Rock Island and Pacific Railroad Company's "Spine Line" in Minnesota, Iowa, and Missouri.
June 21	ICC issues its third quarterly railroad revenue index decision.
July 1	ICC transmits report to Congress on customer pickup of food and grocery products under Section 8 of the Motor Carrier Act of 1980.
July 7	ICC denies petition for rulemaking on the effect of cancellation of joint rates and reciprocal switching agreements and intramodal rail competition, and initiates staff study on the problem.
July 21	Rail iron sulphate exemption becomes effective.
July 23	ICC terminates requirements for owner-operators' fuel cost reimbursement by motor carriers.
July 27	ICC certifies Virginia to regulate its intrastate rail transportation.
July 29	ICC issues summary of 1,600 new railroad rate contracts.
August 4	ICC issues railroad cost of capital findings for 1982.
August 8	ICC proposes restriction-removal modifications to authorities of motor carriers of property.
	Commission proposes rules modification for motor carrier and property broker operating authority requests.
August 10	ICC issues revised regulations relaxing conditions under which railroads may acquire motor carrier authority.
August 12	ICC requests comments on 1983 cost recovery percentage.
August 16	Class exemption for abandonment of rail lines which have been out of service for two or more years becomes effective.
August 17	ICC proposes elimination of "special circumstances" doctrine from rail-carrier acquisition of motor carriers.
August 19	ICC denies Amtrak petition for change of allocation of electric power costs on the Northeast Corridor.
August 24	ICC issues railroad revenue adequacy determinations for 1982.

August 29 — ICC proposes elimination of requirements stipulating that owner-operators' equipment must be leased for a minimum period of 30 days.

September 1 — ICC begins daily publication of the *ICC Register* to reduce cost of placing public notices in the *Federal Register*.

September 12 — Rail export coal exemption becomes effective.

September 13 — ICC issues report on pricing practices of motor common carriers of property.

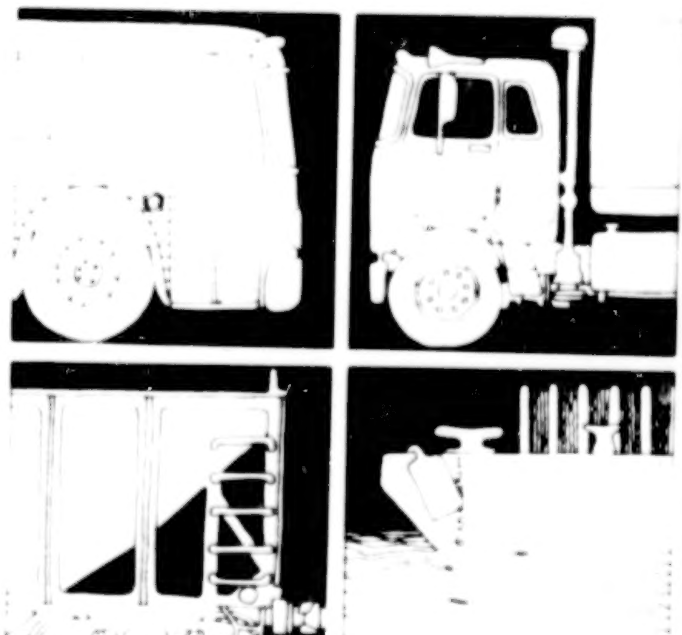
September 15 — ICC releases listing of minority and female-owned motor carriers.

September 21 — ICC issues fourth quarterly railroad revenue index decision.

September 23 — ICC proposes withdrawal of antitrust immunity for collective ratemaking activities for rates applicable to motor shipments under 1,000 pounds.

September 27 — ICC proposes regulation exemptions for rail transport of poultry, meat, and dairy products.

Commission modifies procedures for complaints against bus company rates and fares.



LEGISLATION

During fiscal year 1983, the Commission focused its legislative activities on oversight of the major regulatory legislation passed in the last few years, and participated in Congressional oversight hearings which addressed the implementation and effects of the Motor Carrier Act, the Household Goods Transportation Act, and the Staggers Rail Act. In addition to the presentation of formal testimony on these topics, the Commission provided detailed responses—including explanations of decisions reached in individual Commission proceedings and data in areas of particular Congressional interest—to extensive follow-up questions which were generated by the hearings.

While the Commission did not transmit any formal legislative proposals to Congress during the fiscal year, it did participate actively in the Department of Transportation's drafting of further deregulatory legislation for trucking companies, freight forwarders, and water carriers. At the close of fiscal year 1983, draft legislation had been completed, but it had not yet been introduced in Congress.

The fiscal year was a decisive one in Congress' debate on coal slurry pipeline legislation. The Commission testified before Congressional committees several times during the year, and was also involved in the shaping of the text of the compromise legislation considered on the House floor. In preparation for floor consideration, the Commission was asked to provide substantial technical assistance, including information on such issues as the potential problem of long-term "take-or-pay" contracts and the Commission's regulation of existing and future pipelines. The House of Representative defeated H.R. 1010, the Coal Pipeline Act of 1983, on September 27, 1983.

Now that regulatory reform for the trucking, household goods, and railroad industries has been in place for a few years, it is anticipated that further legislation may be considered in the near future. Such legislation may be in the form of further deregulatory proposals, which have been discussed frequently in recent months, or bills which attempt to alter or reverse reforms made by previous legislation. Participation in further oversight hearings will be a key element of this process; therefore, the Commission will continue to take an active role in the legislative process.

A more detailed description of the Commission's activities before Congress during fiscal year 1983 is provided in the following sections.

Railroads

Staggers Act Oversight—The Commission participated in the annual oversight hearings on the Staggers Rail Act in July 1983, by testifying before the Senate Committee on Commerce, Science, and Transportation on July 26, and before the House Energy and Commerce Committee on July 27. In addition to its testimony, the Commission submitted a table listing the status of proceedings conducted in implementing the Act, a brief summary of each of the proceedings, and a brief summary and list of all litigation involving the Staggers Act. The Commission noted that the Act and its implementation have been generally successful in meeting the Congressional goals of assisting railroads in remaining viable

and enabling them to compete more effectively, while, at the same time, protecting captive shippers.

The testimony discussed the effect of the Act on the financial condition of the railroad industry, and stated that evidence indicated that the Act had had a positive effect. The earnings of Class I railroads[1] increased substantially in the first year following enactment of the Staggers Act, primarily because of greater rate flexibility. Although the recession severely affected traffic and earnings in 1982, the industry fared better than it would have without the Staggers Act reforms. A more vigorous and financially viable railroad system is emerging, and its financial condition should continue to improve as the general economy recovers.

The Commission noted that one way the Act's impact could be judged was an analysis of how often its provisions were utilized, and the ICC thus cited major activity in several key areas. In the area of rail contracts, more than 8,000 had been filed as of July 1, 1983, and the railroads filing them ranged from large Class I railroads, to small short-lines, to switching lines. The surcharge and joint-rate cancellation provisions were used extensively, and were instrumental in providing expeditious relief from non-compensatory rates and divisions. The transportation public generally adjusted well to these cancellations, however, some concern was expressed over certain cancellations. The Commission explained that, because of this concern and the Commission's interest in monitoring how cancellations had altered the joint-rate structure, it had instructed its Office of Transportation Analysis to conduct a comprehensive study of the issue.

The Commission discussed the active use of its rail exemption authority to reduce further unnecessary regulation, and used as examples in its testimony the exemptions of trailer-on-flatcar/container-on-flatcar (TOFC/COFC) traffic, agricultural commodities (except grain, soybeans, and sunflower seeds), and hundreds of exemptions of individual rail transactions. The testimony also discussed in greater detail the Commission's recent exemptions of export coal traffic and boxcar movements of all commodities, except nonferrous recyclables. In addition, the testimony outlined the Commission's proposed maximum rail rate policy applicable to captive coal traffic, and described the four upward constraints which comprise the "constrained market pricing" approach.

The Commission concluded its testimony by emphasizing that effective competition is the key to success, and that an environment which encourages efficiency, flexibility, and adequate revenues will promote such competition and related benefits. The Commission stated that it was implementing the Staggers Act with these considerations in mind.

Grain Transportation—The Commission provided further testimony, with particular emphasis on the effects of the Staggers Act on grain transportation, when it testified before a Senate Commerce Committee field hearing in Hutchinson, Kansas, on September 1, 1983. In addition to a

[1] Those earning $50 million or more in annual revenues

general overview of the effects of the Staggers Act and its implementation, the Commission discussed a number of decisions in areas of particular concern to grain shippers.

One of the primary issues addressed at the hearing was the Commission's implementation of the contract-rate provision. The Commission explained that it had attempted to devise workable rules which would encourage the filing of contracts without impairing the rights of protestants or unfairly injuring contracting parties through disclosure of proprietary information. It made clear that in determining the degree to which contract terms would be subject to mandatory disclosure, the Commission had to balance the various competing interests. The testimony also addressed the Commission's decision to allow rail contracts to be implemented prior to their formal approval. The Commission emphasized that it retains jurisdiction over the contract until final approval, and thereby ensures that the right to challenge a contract remains intact during the period between the contract's effective date and formal Commission approval of its terms. The Commission concluded its discussion of contracts by noting that more than 9,000 contracts had been filed by mid-August 1982, 13 percent of which involved grain or grain products.

With regard to market dominance, the testimony stated that the general guidelines instituted in this area represented a flexible, reliable, and more useful method for determining a railroad's market power in a given situation. The Commission discussed a study initiated to examine the joint-rate cancellation issue, and explained that the ICC intended to use the study to decide whether further action would be necessary in the area of joint-rate cancellations. Relative to the application of the ICC's proposed coal rate guidelines to other commodities, the statement emphasized that affected parties would have ample opportunity to address the issue in the particular proceeding involved. The Commission also addressed the issue of private car use and compensation.

In concluding its testimony, the Commission reiterated its belief that the Staggers Act would result in a more healthy and competitive industry that would benefit railroads, shippers, and consumers alike.

Trucking Companies

Motor Carrier Act Oversight—The Commission reported on its implementation of the Motor Carrier Act of 1980 at an oversight hearing held by the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on December 14, 1982. The Commission's statement described the effects of the Act on the industry and the shipping public, provided detailed information on proceedings instituted to implement the Act, and summarized the status of these proceedings before the Commission or under judicial review.

The Commission concluded that the motor industry and the users of its services had responded favorably to the changes enacted in the Motor Carrier Act, and that the reforms had resulted in a more competitive environment. The testimony pointed to a number of factors which indicated that the Act was working well. Since the Act's

implementation, more than 13,000 new companies have received authority. Studies indicate that service levels remain high, and that complaints continue to decline. There has also been greater pricing innovation and more independent ratemaking since the Act's passage. Although owner-operators have not taken advantage of the special provisions of the Act in great numbers, more are beginning to acquire their own authority.

Relative to the motor industry's financial condition, the Commission noted that decreased tonnage had caused excess capacity in the industry, and that this has led to a decline in financial performance and an increase in bankruptcies. However, the Commission agreed with a U.S. General Accounting Office (GAO) report which concluded that poor economic conditions, rather than regulatory reform, were the likely causes of this decline. This view was supported by the fact that there had been a high level of business failures in all sectors of the economy during the period covered by the GAO report.

The Commission identified small community service as a significant measure of the success of the Motor Carrier Act, as this was the area which most people believed would suffer from regulatory reform. The Commission's study of small community service showed that no dramatic changes occurred in rates or service following the Act's enactment, and that changes which did occur were generally favorable. Shipper complaints decreased significantly, and rates actually increased less rapidly than rates to or from larger cities.

The Commission's statement concluded with a description of further legislative recommendations under consideration. Several of these suggested changes were included in the Bus Regulatory Reform Act, such as the elimination of ICC regulation of the issuance of securities for trucking companies, and authority for the Commission to exempt from regulation merger, consolidation, and acquisition of control transactions involving trucking companies. The Commission also described its work in cooperation with the Department of Transportation to examine all facets of trucking regulation, including the possibility of sunsetting the ICC's authority over freight carriers.

The Commission testified again before the Senate Committee on Commerce, Science, and Transportation at the third annual Senate oversight hearing on the Motor Carrier Act of 1980 on September 21, 1983. The ICC submitted information on proceedings conducted under the Act, and on several studies and reports which addressed the Act's effects. The Commission's testimony paralleled a statement delivered in December 1982, with appropriately updated information on the effects of the Act.

The testimony strongly reaffirmed the Commission's view that the motor industry and its users have responded favorably to changes mandated by the Motor Carrier Act. Shipper satisfaction with service levels remained high. The Commission reiterated that service to small communities had not been curtailed; in fact, where any change had occurred in small community service, it had generally improved. The Commission also reported that, although tonnage levels had continued to decline, the decrease was much less

than that reported the previous year, and the financial condition of motor carriers had improved along with the general economy. With regard to rates, it was found that there had been greater pricing innovation and a dramatic increase in independent ratemaking since passage of the Motor Carrier Act.

The Commission concluded that it favored further deregulatory legislation that would eliminate the economic regulation of motor carriers of freight. The Commission also stated its intent to continue to work vigorously to reform and minimize motor regulation in accordance with Congressional intent and the National Transportation Policy.

Household Goods Oversight—The Commission testified at oversight hearings on the Household Goods Transportation Act of 1980 on November 30, 1982, before the House Public Works and Transportation Committee, and on December 10, 1982, before the Senate Commerce Committee on Commerce, Science, and Transportation. At those hearings, the Commission concluded that the Act appeared to be working well to the benefit of both shippers and consumers. In its testimony, the Commission provided an update on ICC implementation of the Act, analyzed the Act's impact on the industry and shippers, and discussed recent trends and anticipated developments in this segment of the transportation industry.

In implementing the Act, two of the Commission's primary goals were the reduction of unnecessary regulation and the strengthening of consumer remedies and protections. By eliminating the required filing of various reports, the Commission estimated that it had relieved the industry of an annual burden of nearly 40,000 work-hours. Consumers benefitted from a number of rules adopted in the Act's implementation, including requirements that customers receive information regarding any claims-dispute resolution program, and that moving companies establish customer complaint and inquiry-handling programs. Regulations requiring that shippers be permitted to observe any weighing of shipments and notification of impending service delays also provided significant protections for consumers.

In reporting the Act's impact on the industry and shippers, the Commission emphasized the wide variety of available price and service options. Discounts based on various factors are widely utilized at the present time, and many moving companies will provide a guaranteed service date with pre-determined compensation if service is delayed. In addition, virtually all household goods companies now offer optional, full-value liability protection to customers. The Commission stated that the number of shipper complaints had declined dramatically, and noted the trend as an indication that the industry is generally providing better-quality service. The Commission stated that the institution of dispute-resolution programs by the major companies should result in even fewer complaints and less need for Commission involvement, although at the time it testified it was too early for the ICC to evaluate the effect of this development.

In its examination of recent trends as the basis for an evaluation of the Act's impact on the industry, the Commission noted that, while more flexible

entry standards had allowed companies to broaden their authorities, they had not brought about an influx of new household goods companies. The testimony described a significant trend toward the use of contracts, and predicted that the advantages of using contracts as a marketing strategy make it likely that the trend will become a permanent practice. The ICC also reported that while binding estimates had been used extensively by only one major company, projections indicated that the use of binding estimates would expand in calendar year 1983. Potential changes were seen to be on the horizon with regard to carrier-agent relationships, and the Commission described its pending investigation into that issue. The Commission reported that although tonnage had declined for most carriers in 1981, the decline was at a much lower rate than that of the prior year. It was reported that the industry as a whole did not appear to be in serious financial difficulty.

Safety—The safety of motor carrier operations was examined by Congress during fiscal year 1983, and the Commission contributed to the debate on this issue by testifying before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on June 14, 1983. The testimony addressed motor carrier safety issues generally, the procedures utilized by the Commission to determine the safety fitness of applicants for authority, and provisions of Title III of S. 1108, the Motor Carrier Safety Act of 1983.

The Commission remarked that although the agency no longer had jurisdiction in the safety area, safety remains a continuing concern. The testimony noted the requirement that trucking companies maintain adequate insurance in order to protect the public, and the Commission's policy requiring that companies file evidence of insurance in compliance with the minimum level prescribed by the DOT before a certificate of authority is granted. The Commission stated its belief that insurance requirements alone are not enough, however, since insurance can be purchased at a price regardless of a company's safety record.

The Commission stated that it views the safety-fitness issue as a serious one, and cited its advocacy of a provision adopted in the Bus Regulatory Reform Act which strengthened the Commission's ability to prevent unsafe passenger operations. The testimony described the procedures used in cooperation with the Bureau of Motor Carrier Safety to determine the safety ratings of applicants, and the manner in which this information is used in application cases.

The Commission provided comments on Section 314 of S. 1108 which would have required the DOT and the Commission to establish specific safety fitness standards for applicants, and procedures for determining compliance with those standards. Although the Commission believed that its application procedures combined with the insurance requirement were adequate to ensure the safety of motor carrier operations, it viewed section 314 of S. 1108 as a useful approach which could aid efforts in this area. However, the Commission emphasized that fitness requirements should not be es-

tablished that would be so restrictive and burdensome as to erect unnecessary economic entry barriers to qualified applicants. The testimony pointed out some problems involved in the use of the licensing process as a safety regulation tool, including the fact that first-time applicants often have no record from which a safety assessment can be made.

The statement also noted that factors of public need and the national transportation policy are balanced with safety in licensing proceedings and that, if Congress intended safety to be an overriding consideration, pertinent legislation should state that intention clearly.

The Commission closed its testimony by stating that increased emphasis on safety is crucial as economic regulation is reduced, and that the ICC remains committed to safe—as well as economical—transportation.

Buses

On June 16, 1983, the Commission testified before the Motor Carrier Ratemaking Study Commission regarding collective ratemaking in the bus industry. The Bus Regulatory Reform Act of 1982, which was signed into law on September 20, 1982, expanded the mandate of the Study Commission to include an examination of the need for antitrust immunity for various ratemaking activities in the bus industry, as well as the impact of the Act's implementation on senior citizens, particularly in rural areas and small communities.

The Commission began by summarizing the antitrust immunity provision of the Bus Act, and outlined its position regarding that provision during deliberations on the bill. In describing its implementation of the section dealing with antitrust immunity, the Commission explained that the Bus Act essentially applied similar Motor Carrier Act provisions to passenger carriers. Since an extensive record had already been developed in the implementation of the Motor Carrier Act proceeding, the Commission had proposed that the same standards and procedures applied to motor carriers of freight be adopted for rate bureau agreements by passenger carriers. Such standards include protection for the right of independent action, and provide guidance regarding the meaning of areas in which antitrust immunity is still applied under the Act, as in those sections dealing with "general rate increases" and "broad changes in tariff structure."

The Commission also described a series of extensive studies conducted to monitor the effects of the Bus Act's implementation on the industry and the public. The most comprehensive of these is a study of the market structure, conduct, and performance of the industry—and how such factors had been affected by the Bus Act—which will build upon an earlier study released by the Commission in 1978. The study will present extensive information on the nature of service provided by bus companies, and will examine and analyze such topics as the relationship of regulation and the existing market structure, the number and type of customers, the role of horizontal and vertical integration, and the extent of cross-subsidization. The ICC was also involved with the Department of Transportation in an analysis of the

pattern of ownership, location, and adequacy of the Nation's network of intercity bus terminals and stations

In concluding its testimony, the Commission emphasized that there is less justification for continuation of antitrust immunity for passenger carriers than for freight carriers. The industry is dominated by only two major carriers and is represented by only one rate bureau, in contrast to the multiplicity of rate bureaus and the vast number of carriers in the freight-hauling sector. For this reason, the Commission expressed the view that there was no need for antitrust immunity for general rate changes, innovative fare changes, or broad changes in tariff structure, and that immunity to set joint-line rates collectively should be terminated on January 1, 1984, as provided by the Bus Act. The Commission also commented that the Department of Justice had confirmed that immunity is not necessary for collective action on joint rates where all of the carriers involved form a part of a particular route. The Commission closed by stating that the elimination of antitrust immunity should have no adverse impact on the ICC's ability to meet its statutory obligations

Coal Slurry Pipelines

The issue of coal slurry pipelines was actively considered again by Congress during fiscal year 1983. With the rate freedoms gained by the railroads in the Staggers Rail Act, proponents of coal slurry pipelines felt that they had their best chance ever of enacting legislation granting the power of eminent domain for pipeline construction.

The Commission testified regarding this legislation on April 13, 1983, before the Surface Transportation Subcommittee of the House Public Works and Transportation Committee, and on May 5, 1983, before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation.

At both of these hearings, the Commission expressed general support for the concept of coal pipelines to enhance competition. However, the Commission took no position on the question of granting eminent domain for coal pipeline construction, since that question involves many complex issues beyond the agency's expertise. The Commission stated its view that, if findings involving transportation issues were involved in the certification process, the ICC should be given authority to make such findings and to certify coal pipeline operators.

The Commission made two suggestions for changes to the coal slurry legislation. First, since it is believed that long-term uninterruptible contracts will be essential to obtain financing for pipeline construction, the Commission suggested that a more detailed contract provision be included in the legislation. Second, the testimony addressed the reimbursement required for the significant costs involved in the processing of certification applications, especially for the necessary environmental studies. The Commission provided draft language which would allow applicants to reimburse directly the agency involved, instead of the United States Treasury.

At the Senate Commerce Committee hearing, several new issues were raised which the Commission was asked to discuss in its testimony. Regarding the contract provision, the

Commission expressed the view that pipeline contracts should receive no more scrutiny than rail contracts receive, but added that the relationship of a contract provision to the common carrier obligation should be clarified. The Commission expressed its belief that parties would thus have the ability to protect themselves, by contract terms, against the risks of construction cost overruns or overcapitalization. The Commission stated that a prohibition against vertical integration was unnecessary, and pointed out that railroads had not been prohibited from carrying coal owned by affiliates. It was additionally noted that the Elkins Act should reduce the potential for discrimination involved in the carriage of an affiliate's coal. Also, the customary close examination by state utility commissions, along with the requirement for antitrust review by the Attorney General contained in both the House and Senate bills, were seen to provide protection where vertical integration might be deleterious.

Coal slurry legislation was reported from the Senate Energy and Natural Resources Committee (S. 267), and from both the House Interior and Insular Affairs Committee and the House Public Works and Transportation Committee (H.R. 1010). The House defeated H.R. 1010 on September 27, 1983, by a vote of 182–235.

ADMINISTRATION

Organization and Management

Concluding the changes in Commission organization begun in fiscal year 1981 and following staff reductions which took place in fiscal year 1982, the Office of Proceedings was restructured into motor and rail sections. This functional division followed the pattern established in the earlier realignments of other Commission operating units. Various record-keeping functions formerly performed by the Office of Proceedings and the Office of Compliance and Consumer Assistance were transferred to the Secretary's Office, thus centralizing in that office most of the support functions relating to the Commission's casework.

Similarly, a restructuring of the Commission's field audit staff took place during the past fiscal year which resulted in savings to the Federal government of more than $600,000 annually in salaries, office space rental, and travel.

On September 1, 1983, the Commission commenced publication and distribution on a subscription basis of the *ICC Register*, a publication which provides public notice of various types of motor carrier applications and filings made with the Commission. The transfer of these notices from the *Federal Register* to the *ICC Register* will result in a substantial reduction in the amount the Commission pays for *Federal Register* publication.

Commission Budget

The Commission's fiscal year 1985 budget was developed and submitted concurrently to the Office of Management and Budget and the Congress in October 1983. The budget reflects the need for less staff as a result of the ICC's reduced regulatory role in motor carrier and rail matters.

Salaries and Expenses Appropriation

On February 24, 1983, Chairman Reese H. Taylor, Jr., and Commission staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the ICC's fiscal year 1984 budget request. Testimony was provided to the Subcommittee on Transportation of the Senate Committee on Appropriations on March 15, 1983.

Payments for Directed Rail Service Appropriation

Between October 5, 1979, and March 23, 1980, the Kansas City Terminal Railway Company provided rail services, as directed by the Commission, over the lines of the bankrupt Chicago, Rock Island and Pacific Railroad. Funding for claims associated with this service and for accounting operations was provided through fiscal year 1983.

ENERGY AND ENVIRONMENT

Energy

During fiscal year 1983, the Commission issued two important energy-related decisions. First, it exempted from regulation all rail movements of coal destined for export.[1] (See "Railroads," page 42.) In another proceeding, the Commission proposed a maximum rail-rate policy applicable to domestic captive coal traffic according to which rates on movements of coal would be subject to four separate upward constraints. Under the proposed guidelines, rates (1) could not exceed "stand alone" costs, (2) could not be set in a way which forced shippers to bear the cost of obvious management inefficiencies, (3) could not increase more than 15 percent a year after being adjusted for inflation; and (4) could not, after the publishing carrier achieved revenue adequacy, be increased without further Commission scrutiny.[2] (See "Railroads", page 31.)

Elsewhere, there is growing evidence that rail utilization of the contract-rate provisions of the Staggers Act has led to more energy-efficient railroad operations. There are now more than 10,000 rail service contracts on file with the Commission. Commission records indicate that in a number of these contracts carriers have employed previously untried pricing practices in a successful effort to improve the efficiency of their railroad fleets. For example, by offering volume discounts or lower rates to consignees who agree to ship outbound finished products in the same cars which provide inbound service on raw materials, railroads are now able to use equipment which previously would have moved emptily. It appears that when railroads are able to establish in advance where their equipment will be needed, they are better able to plan the efficient use of that same, or other, equipment during periods when it is not committed under contract.

Environment

In complying with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Commission has issued several major environmental documents in the past year. Among these were draft environmental impact statements (EIS's) prepared for: (1) a proposal by the Denver and Rio Grande Western Railroad to construct a 65-mile railroad designed to transport coal from the Castle Valley and Wasatch Plateau in central Utah,[3] and (2) the Tongue River Railroad's application to construct an 82-mile rail line between Miles City and coal mines south of Ashland in southeastern Montana.[4] The Commission also issued an EIS examining the environmental effects of a proposed rail-rate structure for domestic shipments of captive coal,[5] as well as expanded environmental assessments for proposals to deregulate export coal[6] and boxcar

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[1] *Railroad Exemption—Export Coal* 367 I.C.C. 570 (1983).

[2] Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide* (not printed), decided February 8, 1983.

[3] Finance Docket No. 30186, *Tongue River Railroad—Construction and Operation—of a Line of Railroad in Custer, Rosebud, and Powder River Counties, Montana.*

[4] Finance Docket No. 30044, *The Denver and Rio Grande Western Railroad Company—Construct and Operation—In Carbon and Emery Counties, Utah.* (Proceeding voluntarily dismissed.)

[5] Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide* (not printed), decided February 8, 1983.

[6] *Railroad Exemption—Export Coal* 367 I.C.C. 570

traffic.[7] (See "Railroads", page 27). In addition, the Commission devoted time to environmental analyses for six other rail construction projects[8] and two major rail consolidation proposals.[9] The Commission's environmental unit also reviewed 108 petitions for waiver or exemption, and completed environmental assessments for 102 abandonment applications and 60 trackage rights and minor rail applications.

The Commission is responsible for compliance not only with NEPA, but also with the requirements of other Federal environmental authorities, including the Endangered Species Act, the Coastal Zone Management Act, and the National Historic Preservation Act. In order to accommodate the interests protected by these and other environmental laws, the Commission occasionally imposed conditions upon its grants of authority in rail abandonment, construction, and exemption proceedings. Such actions were taken to: (1) insure the preservation of an architectural record of historic buildings and bridges threatened directly or indirectly by Commission action;[10] (2) provide that salvage of abandoned railroad bridges will be accomplished at a time of year when spawning fish or nesting waterfowl (including endangered species) will not be adversely affected;[11] (3) allow interested persons a period of time following abandonment to negotiate for the purchase of all or part of a rail right-of-way where it is deemed suitable for alternative public use;[12] or, (4) otherwise protect the human environment.[13] The Commission has also established procedures for the direct notification of interested state and local agencies responsible for land use and other environmental matters of the pendency of abandonment and exemption proceedings in order to provide them with meaningful opportunities for participation. The Commission is considering adoption of a rule which would require applicants, rather than the Commission itself, to provide this notice to state and local agencies.[14]

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[7] *Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 425 (1983).

[8] *Tuscola and Saginaw Bay Railway Company—Construction—in Central Michigan; White Pine Project—Railroad Construction—in Eastern Nevada; Navajo Railroad Construction—in McKinley and San Juan Countries, New Mexico; Belridge Field Cogeneration Project—Railroad Construction—Southern California; New England Energy Park Synthetic Fuels—Railroad Construction, Southern Massachusetts; American High Speed Rail Corporation—Railroad Construction—Los Angeles to San Diego, California.*

[9] Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.*; Finance Docket No. 28640 (Sub-No. 9) *et al.*, *Chicago Milwaukee and Pacific Railroad Company—Reorganization—Acquisition by Grand Trunk Corporation.* (Both proceedings pending.)

[10] Docket No. AB-6 (Sub-No. 153), *Burlington Northern Railroad Company—Abandonment in Phillips and Blaine Counties, MT* (not printed), decided July 15, 1983.

[11] Docket No. AB-6 (Sub-No. 153), *Burlington Northern Railroad Company—Abandonment in Phillips and Blaine Counties, MT* (not printed), decided July 15, 1983.

[12] Docket No. AB-43 (Sub-No. 90), *Illinois Central Gulf Railroad Company—Abandonment in Harden, Johnson, and Pope Counties, IL* (not printed), decided March 8, 1983.

[13] Docket No. AB-43 (Sub-No. 100), *Illinois Central Gulf Railroad Company—Abandonment in McLean, Woodford, Marshall, LaSalle, Lee, Cole, and Stephenson Counties, IL* (not printed), decided September 12, 1983.

[14] Ex Parte No. 274 (Sub-No. 10), *Environmental Notices in Abandonment and Rail Exemption Proceedings* (not printed), served August 10, 1983.

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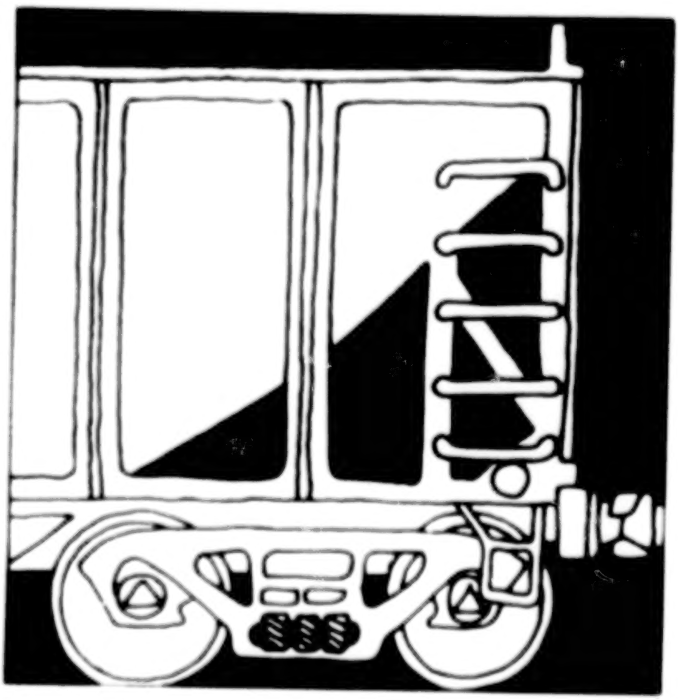

RAILROADS

General Financial Condition

Because railroad traffic recovery traditionally lags behind a general economic recovery, revenue carloadings of Class I railroads in fiscal year 1983 were about 5.5 percent below levels reported in fiscal year 1982, despite improved economic conditions in 1983. However, an 8.7-percent increase in carloadings was reported during the final three months of fiscal year 1983 in comparison to the similar prior-year period. Stable and lower interest rates led to increased demand for new housing and automobiles, and resulted in a 15.8-percent increase in the rail industry's lumber carloadings and a 7.7-percent increase in its automotive carloadings in fiscal year 1983, as compared to fiscal year 1982. However, during the same period carloadings of coal, the largest revenue-producing commodity for the rail industry, declined 9.7 percent primarily because of lower demands for electricity from coal-fired electricity generating plants, and because of a lessened demand for export coal.

Commission data for Class I line-haul railroads for the 12 months ending September 30, 1983, and September 30, 1982, show that revenues decreased 7.7 percent to $26.1 billion, and revenue ton-miles of freight fell 3.4 percent. However, during the third quarter of 1983, revenue ton-miles of freight increased substantially, by 10.6 percent, as a reflection of the improvement in the Nation's economy. This was the first year-to-year quarterly increase in traffic volume since the third quarter of 1981. Net railway operating income for the 12 months ending September 30, 1983, increased 35.2 percent to $1.1 billion, primarily because of substantial improvement in the third quarter of 1983. The rate of return on net investment in transportation property for Class I line-haul railroads increased to 3.13 percent from 2.32 percent.

The recession-induced decline in traffic volume forced significant personnel layoffs as the industry attempted to reduce expenses in line with revenues. Total Class I railroad employment for the first nine months of 1983 declined by 14.6 percent to a monthly average of 330,250 employees, compared to a monthly average of 386,836 employees during the same period of 1982. As the economy recovers, the industry should be able to obtain productivity gains if it is cautious in adding employees to the work force.

The lower traffic levels also resulted in a decline in maintenance expenditures of Class I railroads. Less wear and tear on roadway and less equipment in service allowed most railroads to cut maintenance levels. The savings resulted primarily from personnel layoffs, and productivity gains are again possible if the railroads are cautious in hiring additional employees.

Considering the magnitude of the recession, the industry fared quite well, and the long-term outlook is favorable. The Staggers Rail Act of 1980, the Commission's continuing implementation of it, the Economic Recovery Tax Act of 1981, and the consummation of several major rail mergers, have all contributed to strengthen the financial structure of the industry. While the overall rate of return on investment is still far below adequate levels, it has risen well above the level of the mid-1970's and should continue to improve as the general economy recovers. Al-

though the recession undoubtedly affected earnings, the effects would have been more severe had the Staggers Act not been enacted. Use of the inflation-based, rate-increase provision generated significant revenues for the industry and helped prevent even greater declines in earnings. Additionally, in many instances the carriers have discontinued noncompensatory services, or made such services compensatory by corrective pricing measures.

Reorganizations

On March 31, 1983, the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) filed with the Commission an Amended Plan of Reorganization. Under the Amended Plan, the Grand Trunk Corporation (GTC) would acquire control of the reorganized Milwaukee through ownership of stock. Milwaukee's present, principal stockholder, the Chicago Milwaukee Corporation, filed an Alternate Plan of Reorganization under which Milwaukee would be reorganized as a separate entity. On July 27, 1983, the Chicago and North Western Transportation Company (CNW) filed an Inconsistent Plan of Reorganization under which its wholly owned subsidiary, Mid-American Rail Properties, would acquire the Milwaukee. The Commission is considering these proposals together in one proceeding.[1]

The Chicago, Rock Island and Pacific Railroad Company (Rock Island) has been ordered into liquidation by its Reorganization Court. The court was advised that a Plan of Reorganization proposed by the Trustee on January 19, 1983, does not need to be submitted for Commission approval under Section 77 of the Bankruptcy Act because the reorganization contemplated by the plan is a non-railroad reorganization.[2] This was conditioned on the understanding that proposed sales and other transactions for the continued use of Rock Island lines for rail service would be submitted for Commission approval.

The largest transaction approved by the Commission for the sale of a line of a bankrupt carrier involved the Rock Island's 720-mile, so-called Spine Line between St. Paul, Minn., and Kansas City, Mo. The Commission approved applications by the CNW and the Soo Line Railroad Company to purchase that line.[3] Subsequently, the Rock Island's Reorganization Court approved sale of the line to CNW. See page 39.

The Commission retains jurisdiction under Section 77 of the Bankruptcy Act over three other reorganizations involving the Boston and Maine Corporation; the Morristown and Erie Railroad Company; and the New York, Susquehanna and Western Railroad Company. Although these reorganization proceedings have been essentially completed, several petitions were filed during fiscal year 1983 by trustees and counsel requesting the Commission to set maximum limits of compensation as required by the Bankruptcy Act.

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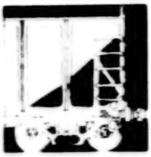
[1] Finance Docket No. 28640 (Sub-No. 9), *Chicago, Milwaukee, St. Paul and Pacific Railroad Company Reorganization—Acquisition by Grand Trunk Corporation.*

[2] Finance Docket No. 27872 (Sub-No. 6), *Chicago, Rock Island and Pacific Railroad Company Reorganization (1983 Plan of Reorganization)* (not printed), decided February 8, 1983.

[3] *Midwestern Rail Prop. Inc.—Pur.—Rock Island*, 366 I.C.C. 915 (1983).



Mergers and Consolidations

The Commission approved the consolidation of the Union Pacific, Missouri Pacific and Western Pacific railroads which was consummated on December 22, 1982.[4] This consolidation created a railroad system stretching over 22,000 miles through 21 states, from the Pacific Coast to the Mississippi River and Gulf Coast. Approximately $47 million a year in public benefits will accrue from this transaction. The Commission imposed conditions, including trackage rights for competing railroads, designed to ameliorate anticompetitive consequences. Although the record in this proceeding contained over 700 exhibits and 25,000 pages of transcript, the decision was served more than six months in advance of the initial statutory deadline.

Two consolidation decisions issued last year were affirmed.[5] The court in each case approved the decision on the consolidation, but remanded for further consideration of specific protective conditions.

The Commission reopened nine proceedings[6] for the limited purpose of considering removal of certain traffic-protective conditions formerly imposed as a matter of course in all rail consolidation proceedings.[7]

The Commission was also presented with a matter of first impression with the proposed merger of CSX Corporation (CSX), a major railroad holding company, and Texas Gas Resources Corporation. CSX acquired Texas Gas stock through a tender offer. Control of Texas Gas would result in CSX obtaining an interest in American Commercial Lines, Inc. (ACL), a water carrier subsidiary of Texas Gas. Railroad interests in water carriers are subject to prior Commission approval according to Section 11 of the Panama Canal Act, 49 U.S.C. 11321. The Commission decided CSX could acquire Texas Gas if the stock of ACL were placed in an independent voting trust pending a formal applica-

[4] *Union Pacific — Control — Missouri Pacific, Western Pacific*, 366 I C C 459 (1982)

[5] *Guilford Transp Industries Inc — Control B&M Corp* 366 I C C 294 (1982) appealed in *Lamoille Valley Railroad Company et al v I C C* D C Cir, Nos 82-1498, 82-1523, 82-1578 and 82-1668 and *Guilford Transp Industries — Control — D&H Ry Co*, 366 I C C 396 (1982) appealed in *Central Vermont Railway Inc et al v I C C*, D C Cir, No 82-2136

[6] *St Louis S W Ry Co Control*, 180 I C C 175 (1932), *Petaluma & S R R Co — Control*, 180 I C C 321 (1932), *Pere Marquette Ry Co Merger*, 267 I C C 207 (1947), *Chesapeake & O Ry Co — Control — Baltimore & O Ry Co*, 317 I C C 261 (1962), *Southern Pacific Co Merger*, 312 I C C 598 (1961), *Great Northern Pac — Merger — Great Northern*, 331 I C C 228 (1967), *Southern Pac Co Merger*, 327 I C C 38 (1964), *Chesapeake & O Ry Co — Control — Western Maryland Ry Co*, 328 I C C 684 (1967), and *Chesapeake & O Ry Co — Control — Chicago S S & S B R*, 330 I C C 477 (1966)

[7] The standard set of traffic-protective conditions were developed in *Detroit T & I R Co Control*, 275 I C C 455 (1950) The Commission has decided to remove all such conditions from prior consolidations *Traffic Protective Conditions*, 366 I C C 112 (1982), however, that decision was stayed on May 19, 1982, by the U S Court of Appeals for the Sixth Circuit in *Detroit, Toledo and Ironton Railroad Company v U S and I C C*, No 82-3251 (6th Cir, 1982)

tion for approval of control. This is the first use of a voting trust between rail and water carriers. The Commission's action was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit which required CSX to file its application with the Commission within 90 days.[8]

On limited court remand, the Commission reaffirmed its prior decision that it had no jurisdiction over the formation of a holding company by Burlington Northern, Inc.[9]

The Commission received notice of several consolidations within existing corporate families according to the class exemption of such transactions contained in 49 C.F.R. 1180.2(d)(3). This exemption was used when the Fort Worth and Denver Railway Company was merged into its parent, the Burlington Northern Railroad,[10] and when the Seaboard Coast Line Railroad Company and the Louisville and Nashville Railroad Company were merged to form Seaboard System Railroad, Inc.[11] The St. Louis South Western Railway Company eschewed the exemption procedure, and on September 9, 1983, filed an application for approval of its merger with its subsidiary, the St. Louis South Western Railway Company of Texas.[12]

Rates

In fiscal year 1983, the Commission had substantially finished implementation of the reforms of the Staggers Rail Act of 1980 (Staggers Act) relative to railroad rate regulation. A "rate base" for all regulated railroad common carrier rates was almost completed. The rate base is predicated upon the rates in effect on October 1, 1980, the effective date of the Staggers Act, which were subject to challenge. Shippers filed 864 complains questioning the reasonableness of numerous rates and, at the end of the fiscal year, 719 complaints had been dismissed. Eighty-eight of the remaining 145 cases are expected to be settled without Commission adjudication, while 29 others are being held in abeyance, three are in discovery stages, four are in record-building, and 21 are awaiting an initial decision.[13] Upon completion of the rate base, no further challenges are authorized by statute to consider the reasonableness of such existing rates.

The base rates are updated each quarter to account for changes in rail-

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[8] *Water Transport Association v. I.C.C.*, No. 83-1737 (D.C. Cir., 1983).

[9] *Burlington Northern Inc.—Control and Merger—St. Louis San Francisco Railway Company*, 366 I.C.C. 862 (1983) on remand in *Broth. of Ry. and Airline Clerks v. Burlington Northern*, 671 F.2d 1085 (8th Cir., 1982).

[10] Finance Docket No. 30061, *Burlington Northern Railroad Company—Merger Exemption—Fort Worth and Denver Railway Company* (not printed), decided November 15, 1982.

[11] Finance Docket No. 30053, *Seaboard Coast Line Railroad Company—Merger Exemption—Louisville and Nashville Railroad Company* (not printed), decided November 12, 1982.

[12] Finance Docket No. 30150 (Sub-No. 1), *St. Louis South Western Railway Company—Merger—St. Louis South Western Railway Company of Texas* (not printed), decided September 9, 1983.

[13] Figures date from close of business, October 3, 1983. See Ex Parte No. 421, *Complaints Filed Pursuant to the Savings Provisions of the Staggers Rail Act of 1980 (Section 229, Public Law 96-448)* (not printed), decided October 3, 1983.

[14] The updating was accomplished through a series of decisions issued in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (decisions not printed), effective December 20, 1982, March 18, 1983, June 21, 1983, and September 21, 1983.

road costs.[14] The Commission as continually reviewed the procedures used to develop inflation factors, has been exploring the feasibility of adding a specific productivity adjustment factor,[15] and has proposed other adjustments to improve its accuracy.[16]

The Commission implemented final regulations for railroad use of contracts which essentially delineate filing and disclosure requirements.[17] Once approved, a contract removes the subject traffic from further Commission regulation. At the end of fiscal year 1983, the Commission had approved all submitted agreements, and almost 10,000 contracts were in effect.

The limitation of Section 10713(k) on the amount of railroad equipment which can be dedicated to a single shipper has affected some contracts, but the Commission granted relief from these restrictions in numerous proceedings.[18] The Rail Safety and Service Improvement Act of 1982 removed certain forest and paper commodities from this restriction.[19]

The Commission also adopted procedures to allow contracts to become effective upon the date of filing, thus eliminating short-notice exemption requests and significantly improving the flexibility of contract use.[20]

Contracts have proven to be an easy mechanism for coordination of railroad service with shipper needs without regulatory oversight. They have been particularly effective in facilitating intermodal movements, such as ocean exports, and have been used extensively to provide discounts from the common carrier rates.

The Commission proposed a new maximum rail-rate policy applicable to captive coal traffic.[21] Under the proposed "constrained market pricing" approach, railroads' pricing of market-dominant coal traffic would be subject to four upward restraints. First, a coal shipper could not be charged more than the "stand-alone cost" of providing service. Second, captive shippers[22] would not be required to bear the cost of obvious rail management inefficiencies. Third, railroads would generally not be permitted to increase their rates on captive traffic by more than 15 percent in a single year after inflation adjustments. Fourth, only railroads without adequate revenue levels could adjust their rates under these guidelines.

The Commission continued to review rail rate actions on recyclables, and carrier compliance with a rate cap of 146 percent of revenue-to-variable costs required for recyclable rail transportation, except ferrous recycla-

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[14] This review is being made in Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Adjustment Procedures — Productivity Adjustment*, comments completed October 25, 1983.

[15] Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), decided June 10, 1983.

[16] *Railroad Transportation Contracts*, 367 I.C.C. 9 (1983).

[17] For example, see No. 38949, *Southern Pacific Transportation Company — Petition for Relief Under 49 U.S.C. 10713(k)* (not printed), decided January 24, 1983.

[18] This change was implemented in *Railroad Transportation Contracts*, 367 I.C.C. 397 (1983).

[19] *Contract Implementation Date*, 367 I.C.C. 399 (1983).

[21] Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines — Nationwide* (not printed), decided February 8, 1983.

[22] The Commission clarified its definition of captive shippers in *Aluminum Assn., Inc., et al. v. ACY R. Co., et al.*, 367 I.C.C. 475 (1983), finding no market dominance because complainants had available competitive intramodal and intermodal sources, as well as product and geographic competition.

bles.[23] The Commission also undertook a review of the prescription ratio in light of changes in railroad costs.[24]

Virginia became the first State to be certified by the Commission to regulate intrastate rail traffic.[25] Nine states are directly regulated by the ICC,[26] while no intrastate regulation exists in eight states and the District of Columbia.[27] Thirty-one States are provisionally certified pending permanent certification. State regulatory actions which deviate from Federal law or practice may be, and have been successfully, protested by railroads in several proceedings.[28]

New regulations were adopted to expedite and to facilitate resolution of disputes among railroads over divisions of revenues on joint rates.[29] The Commission proposed to remove the last remaining car-service rule,[30] and clarified its policy regarding electronic transmission of documents to include bills of lading.[31] Adoption of the new Uniform Railroad Costing System (URCS) neared completion.[32] The URCS procedures and methodologies are anticipated to increase significantly the accuracy of railroad costing over that previously available under Rail Form A.

Car-hire matters continued to occupy Commission attention. Concern that the method used in the determination of car cost allocation was overstating costs for the prescription of inter-rail freight car rentals persuaded the Commission to postpone its annual updating.[33] Postponement of the annual updating on shipper-owned tank cars was also ordered.[34] The Commission authorized renegotiation of the private tank car mileage allowance agreement,[35] and specifically re-

[23] See Ex Parte No. 394, *Cost Ratio for Recyclables—1980 Determination* (not printed), decided November 30, 1982, with embraced cases, and *Cost Ratio for Recyclables—1980 Determination*, 367 I.C.C. 623 (1983).

[24] Ex Parte No. 394 (Sub-No. 1), *Cost Ratio for Recyclables—1983 Determination* (not printed), decided June 28, 1983.

[25] *Intrastate Rail Rate Authority—Virginia*, 367 I.C.C. 527 (1983). Illinois was scheduled to become the first state to be certified (July 1, 1983) but failed to comply with certain preconditions. *State Intrastate Rail Rate Authority—P.L. 96-448*, 367 I.C.C. 149 (1983). Florida was tentatively certified subject to certain conditions. Ex Parte No. 388 (Sub-No. 4), *Intrastate Rail Rate Authority—Florida* (not printed), decided March 18, 1983.

[26] In addition to California, Connecticut, Delaware, Mississippi, Nevada, and North Carolina, three additional states requested ICC assumption of intrastate rail rate regulation. They were: Wyoming, jurisdiction assumed in Ex Parte No. 388 (Sub-No. 17), *Intrastate Rail Rate Authority—Wyoming* (not printed), decided February 14, 1983; New Jersey, Ex Parte No. 388 (Sub-No. 21), *Intrastate Rail Rate Authority—New Jersey* (not printed), decided October 3, 1983; and Pennsylvania, Ex Parte No. 388 (Sub-No. 28), *Intrastate Rail Rate Authority—Pennsylvania* (not printed), decided June 3, 1983. One State presently regulated directly by the Commission, Mississippi, has sought recertification.

[27] The unregulated States are: South Dakota (at its request) and Alaska, Arizona, Hawaii, Maine, Massachusetts, Rhode Island, and Vermont, which, with the District of Columbia, did not request certification.

[28] See, e.g., *Petitions of L&N Review Decision of Pub. Serv. Com. of IN*, 367 I.C.C. 639 (1983).

[29] *Revised Procedures for Divisions of Revenue Cases*, 367 I.C.C. 353 (1983).

[30] Ex Parte No. 285, *Maintenance of Records Pertaining to Demurrage, Detention, and Other Related Accessorial Charges By Rail Common Carriers Of Property* (not printed), decided December 20, 1983.

[31] *Electronic Transmission of Loss and Damage Claims and Freight Bills*, 367 I.C.C. 699 (1983).

[32] Ex Parte No. 431, *Adoption of the Uniform Railroad Costing System for Determining Variable Costs for Purpose of Surcharge and Jurisdictional Threshold Calculations* (not printed), decided June 22, 1983.

[33] Ex Parte No. 334, *Car Service Compensation—Basic Per Diem Charges* (not printed), decided June 15, 1983.

[34] Ex Parte No. 328, *Investigation of Tank Car Allowance System* (not printed), decided August 29, 1983.

[35] *Investigation of Tank Car Allowance System*, 367 I.C.C. 48 (1982).

affirmed the antitrust immunity of parties conducting negotiations under the protections of section 10706a(5)(A) agreements.[36]

Nine requests for antitrust protection of shipper agreements to negotiate private car-hire compensation had been received. Three were granted final approval.[37]

The Commission continued to monitor rate bureau agreements to insure more restricted antitrust protections. In response to a previous Commission decision,[38] modified agreements were filed by the Western Railroad Traffic Association, Traffic Executive Association—Eastern Railroads, and the Southern Freight Association. Additionally, the Association of American Railroads filed an amended interterritorial agreement for the joint consideration and establishment of uniform per diem, mileage, demurrage, and storage rates and charges.[39]

The Commission instituted a new rulemaking proceeding to determine whether to delay the so-called "direct connector" requirement to collective consideration of joint rail rates beyond the statutorily mandated cut-off date of January 1, 1984.[40] The Commission's prohibition of classification rate bureaus' consideration and publication of rules or charges unrelated to classification, or not prescribed by the Commission, was proposed to be extended to rail rate bureaus.[41]

Related to the Commission's monitoring of rate bureau activities is the application of labor-protective conditions to rate bureau employees. The Commission instituted a declaratory order proceeding to determine the liability of railroads withdrawing from rate bureau activities to employees dismissed or displaced after the effective date of the resignation.[42] The Commission also instituted a proceeding to determine the extent of liability of rate bureaus for dismissed managerial personnel.[43]

Final rules were adopted to allow tariffs to become effective on 20 days' notice for rate increases, and on 10 days' notice for rate decreases.[44]

[36] Ex Parte No. [illegible] ... decided March [illegible] 198[illegible].

[37] Section 5a Application No. 5, Chemical Manufacturers Association (not printed), decided July [illegible] 1983; Section 5a Application No. [illegible], The Fertilizer Industry [illegible] (not printed), decided July [illegible] 1983; and Section 5a Application No. [illegible] ... (not printed), decided August [illegible] 1983. The six pending applications were: Application No. 1 Shippers Equitable Compensation Action Committee; Application No. 2 Shippers Action Committee; Application No. 3 National Industrial Manufacturers Association; Application No. 4 American Petroleum Institute Agreement; Application No. [illegible] Institute of Shortening and Edible Oils, Inc.; and Application No. [illegible] The Fertilizer Institute.

[38] Western Railroads Agreement, 365 I.C.C. 478 (198[illegible]).

[39] Section 5b Application No. [illegible], Railroad Per Diem, Mileage, Demurrage and Storage Agreement (not printed), decided October 19, 198[illegible].

[40] Ex Parte No. 447, Petition to Delay Application of "Direct Connector" Requirement for Joint Rail Rates of General Increase, 49 U.S.C. 10706 (not printed), decided September 7, 1983.

[41] Surcharge—Shipments Moving on Order Notify Bill of Lading, 367 I.C.C. 340 (1983).

[42] No. 38987, Petition for Declaratory Order—Liability of Rate Bureau Members Under Section [illegible] of the Staggers Rail Act of 1980 (not printed), decided June 28, 1983.

[43] Section 5b Application No. 2, Western Railroads Agreement (not printed), decided September 9, 1983.

[44] Reduction Notice Period for Filing Railroad Tariffs, 367 I.C.C. 707 (1983).

Joint Rate Surcharges and Cancellations[45]

Fiscal year 1983 marked the third year railroads were able to use the surcharge and joint-rate cancellation provisions of the Staggers Rail Act.[46] The primary purpose of these provisions was to give railroads a mechanism to obtain quick relief from noncompensatory divisions of rates, and to permit carriers to earn adequate returns from light-density line service.

The provisions authorize individual railroads unilaterally to impose a surcharge, or cancel a joint rate if the rate does not provide the railroad with 110 percent of its variable cost. Individual rail companies may also impose a surcharge on interline traffic originating or terminating on light-density lines when the existing rates do not provide revenues adequate to cover 110 percent of the company's variable cost, plus 100 percent of its reasonably expected costs of continuing operations on the line.

For purposes of reporting the extent of surcharge activity, the Commission counts as one surcharge an application of one or more surcharge amounts to a particular category of traffic as defined by the surcharge tariff. These categories may be as narrow as a single commodity moving between specified points, or as broad as all interline traffic originating or terminating on a railroad's line. On this basis, the Nation's railroads filled 64 new surcharges and negative or allowance surcharges that became effective during the year (see Appendix B, Table 15), compared to 117 surcharges filed in fiscal year 1982 and 114 surcharges filed in fiscal year 1981. While this represents a decrease in the total number of new filings, there were 59 revisions to existing surcharges and seven surcharge cancellations during the year. The number of carloads affected by these surcharges remain small, totaling less than 0.4 percent of carloads shipped. Estimated annual revenues associated with the surcharges and negative surcharges total $24.8 million and $(0.6) million, respectively, for a net total of $24.2 million.

A majority of the new surcharges filed were commodity-oriented. Of these, 20 consisted of surcharges imposed on specific commodities to generate additional revenue, while 27 constituted negative surcharges imposed presumably in response to surcharges imposed by other carriers. Principal commodities and commodity groups for which surcharges were imposed include foodstuffs and auto parts (Detroit, Toledo and Ironton), scrap iron (Illinois Central Gulf) and pulp, paper, and allied products (Conrail).

Principal commodities for which allowance or negative surcharges were applied included lumber (Louisiana & Northwest and Detroit, Toledo & Ironton), soda ash (Norfolk & Western), cotton (Illinois Central Gulf), and chem-

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[45] This section fulfills Section 217(c)(1) of the Staggers Rail Act of 1980 (P.L. 96-448) which requires the Commission to include in its Annual Report to Congress the following information concerning joint-rate surcharges and cancellations: (a) the effect on shippers, ports, Class II and Class III rail carriers, railroad employees, etc.; (b) the number of surcharges, revenue collected from them, surcharge cancellations, and the number of joint-rate cancellations by the Consolidated Rail Corporation and all other rail carriers; and, (c) operation of special remedies available to Class II and Class III rail carriers under Section 217.

[46] Section 10705a of Title 49, *United States Code*, introduced by the Staggers Rail Act, effective October 14, 1980.

icals, petroleum and allied products (Chicago, Milwaukee, St. Paul & Pacific).

Eighteen surcharges were applied on traffic originating or terminating on light-density lines (L.D.L.). Fifteen of these were imposed by Class II and Class III companies. Estimated annual revenues to be generated by L.D.L. surcharges total $14.2 million.

Conrail filed five new commodity, and one new light-density, surcharges. In addition, Conrail filed ten revisions to previous surcharges and cancelled two commodity surcharges and one negative surcharge. Revenue estimates show that Conrail's surcharges will generate $18.1 million in annual revenues. This continued decline in the number of surcharge filings (37 in fiscal year 1981 and 17 in fiscal 1982) reflects Conrail's use of the Northeast Rail Service Act of 1981 for relief from branch-line losses.

The number of surcharges imposed by non-Conrail carriers declined from previous-year levels as 20 commodity, 21 negative or allowance-commodity, and 17 light-density line surcharges were applied. This total of 58 surcharges compares to 99 surcharges filed in fiscal 1982 and 44 in fiscal 1981. Non-Conrail railroads also filed 49 surcharge revisions and four surcharge cancellations this year. The breakdown of new surcharge filings is as follows: Class I railroads filed 10 commodity, 20 negative or allowance-commodity, and two light-density line surcharges; Class II railroads filed one light-density line surcharge; and Class III railroads filed 10 commodity, one negative or allowance-commodity, and 14 light-density line surcharges. Most active were the Detroit, Toledo & Ironton with eight commodity (of which three were negative), Illinois Central Gulf with seven (of which four were negative), Johnsonburg, Kane, Warren & Irving with six, and the Norfolk & Western with seven negative-commodity surcharges. Revenues associated with non-Conrail surcharges total net $6.0 million annually.

The Commission identified 33 joint-rate cancellations during fiscal year 1983,* up from 24 last year. All but three were allowed to go into effect.

The Commission interprets the cancellation provisions of Section 10705a as generally providing railroads with the absolute right to cancel joint rates when the division of revenue affords a company a revenue-to-variable-cost ratio of less than 110 percent. When the cancelling railroad's revenue-to-variable-cost ratio exceeds that level, the Commission will consider under the public interest standard of Section 10705(e)—which historically has governed joint-rate cancellations—those cancellations filed under Section 10705a. Because the revenue-to-variable-cost ratios for many joint rates subject to cancellation exceeded 110 percent, all cancellation cases during the fiscal year were decided under Section 10705(e).

The overall impact of surcharges and cancellations to date on shippers, ports, Class II and Class III rail companies, and railroad employees remains difficult to ascertain. Counts and revenue estimates made to date seem to indicate that only a small portion of rail traffic is actually affected.

* Cancellations brought before the Suspension Board.

The ICC's joint rates study of November 1982 acknowledged shipper and railroad complaints of being disadvantaged by joint-rate cancellations, but the study concluded that most affected parties are able to adjust by using or developing routes not subject to surcharges or cancellations, or by diverting traffic to other transportation modes. More recently, in comments supporting a petition to the Commission for the initiation of rulemaking, shippers alleged that joint-rate cancellations eliminate their transportation alternatives, cause them too use circuitous and less efficient routes which incur additional transportation costs, and which impair the shippers' ability to enter into transportation contracts with certain carriers.[48] Two railroads complained of adverse impacts, one regarding the ability to enter into allowance contracts, and another regarding significant traffic shifts affecting their ability to achieve revenue adequacy. In denying the petition, the Commission indicated it was initiating a staff study to obtain the facts of the matter, and that further action would depend on the study's results.

Another indication of the impact of surcharges and cancellations is the extent to which they are challenged by affected parties before the ICC. As indicated below, the challenges have been few. Section 10705a of the Staggers Act sets forth various grounds for challenges, the most important of which is whether the existing rate produces revenues equal to or greater than 110 percent of variable cost.

During fiscal year 1983, the Bureau of Accounts received 14 requests (covering 471 movements) for variable cost calculations from shippers or railroads affected by surcharges.[49] These numbers show a rapid decline in requests since the start of the surcharge program in fiscal year 1981, when requests numbered 229 and covered 21,690 movements. The decline is attributed in part to provisions in Conrail's tariffs that allow shippers and connecting carriers to effect upon request rollbacks and cancellations of certain surcharges. These "automatic" rollbacks and cancellations are based on revenue-to-variable-cost calculations performed by Conrail, and are included in its surcharge tariffs. Most shippers and railroads affected by Conrail's surcharges appear satisfied with its calculations and have not sought relief from the Commission.

A total of six surcharges, all applying to light-density lines, were brought before the Commission's Suspension Board during fiscal year 1983—down from last year's total of 15. None of these cases resulted in a surcharge being cancelled or reduced.

In November 1982, the Commission issued its report to Congress, as required by Section 217 of the Staggers Act, on whether the provisions of Section 10705a have adequately addressed the joint-rate problems of rail carriers, including noncompensatory divisions of joint rates and uneconomic light-density lines.[50] This section

[48] Ex Parte No. 44[illegible] [illegible] (not printed), decided June [illegible].

[49] The Bureau of Accounts also received four requests covering [illegible] movements from shippers and connecting carriers affected by joint-rate cancellations. These are less than a tenth of the requests [illegible] year 198[illegible].

[50] Ex Parte No. 4[illegible], Joint Rates Study: A Report to Congress Pursuant to Section 217 of the Staggers Rail Act of 1980 (not printed), decided November [illegible]. The Commission received [illegible] comments and [illegible] replies. Shippers reporting experience with surcharges or cancellations indicated minimal problems, with a few citing substantial problems or benefits. Carriers reported few problems.

provides carriers remedies in the form of surcharges and cancellations of joint rates.

The Commission concluded that adequate remedies were available, indicated that the provisions of 10705a(a), (commodity surcharges), scheduled to expire September 30, 1983, should be extended for an additional year and recommended that Congress consider extending the commodity surcharge authority beyond 1984. The authority to apply surcharges to light-density lines and to cancel joint routes is not subject to expiration. The Commission concluded that these provisions have been useful in resolving especially acute divisions problems in which carriers have not recovered at least 110 percent of variable costs. It also recommended that Congressional intent be clarified with respect to the extent of the protection to be afforded Class III carriers and the evidentiary showing required to invoke the protection.

Subsequently, in response to a petition of Conrail, the Commission decided to extend the joint rate-surcharge provisions of Section 10705a(a) for the permissible one-year period.[51] The provisions are now due to expire on September 30, 1984.

The Commission clarified several matters in respect to light-density surcharges. It determined that Section 10705a(4), which precludes a rail carrier from applying a surcharge to a joint rate if, during the previous year, it failed to concur in all rate increases of general applicability, applies only to commodity-directed surcharges, not light-density surcharges. The Commission also found that since bridge traffic moves "to and from" a line on which a surcharge is to be imposed under Section 10705a(b)(2), bridge traffic revenues and costs may be included in determining the applicability of the surcharge. By contrast, Section 10705a(b)(1)(A) only permits light-density surcharges to be applied to traffic "originating or terminating" on the line, and therefore, the costs of bridge traffic may not properly be included in the determination of the validity of a surcharge. The Commission limited reallocation of fixed amount, light-density line surcharges among shippers to instances in which specific evidence demonstrates that shippers would be unreasonably affected by the surcharges as proposed.[52]

The Commission held in abeyance a proceeding determining whether light-density line surcharges may be applied to single-line traffic while that issue was under review in another proceeding.[53]

The United States Court of Appeals for the Seventh Circuit set aside a Commission decision[54] upholding Conrail's cancellation of joint rates on through routes through interterritorial gateways, and remanded the case to the Commission.[55] The Commission

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[51] Ex Parte No. 448, *Consolidated Rail Corporation — One Year Extension of Surcharge Authority Under 49 U.S.C. 10705a(a)* (not printed), decided September 26, 1983.

[52] No. 38799, *Light Density Surcharge, Brunswick, MO-Omaha, NE, Line, N&W* (not printed), decided October 28, 1982; No. 38799, *Light Density Surcharge, Brunswick, MO-Omaha, NE, Line, N&W* (not printed), decided November 29, 1982.

[53] No. 38977, *Alldredge Grain & Storage Company, et al. v. Norfolk Southern Corporation & Norfolk and Western Railway* (not printed), decided March 1, 1983.

[54] *Changes in Routing Provisions — Conrail — July 1981*, 365 I.C.C. 753 (1982).

[55] *Chesapeake and Ohio Ry. Co. v. ICC*, 7th Circ. Nos. 81-2286, 82-1625, and 82-1693.

directed Conrail to present evidence on the impact of the cancellations, including the relative efficiency of the individual "closed" and "open" routes.[56]

Construction, Acquisition, and Operation

The Commission continued its consideration of two major proposals involving the construction and operation of rail lines to haul coal. In May 1983, the Commission reopened the record in a proceeding concerning the construction by Star Lake Railroad Company (a wholly owned subsidiary of the Atchison, Topeka and Santa Fe Railway Company) of an 82-mile rail line in New Mexico.[57] The Commission is considering (1) evidence of estimated operating expenses and revenues arising from the operation by the applicant, Atchison, Topeka and Santa Fe Railway Company, of the line to determine whether the line would be self-sustaining, (2) allegations that applicant Star Lake Railroad Company made misleading statements to obtain American Indian consents to rights-of-way over allotment lands, and (3) whether the construction is consistent with the public interest in preserving the Navajo tribe as a quasi-sovereign nation and protective of the tribe's ability to maintain itself as a culturally and politically distinct entity.

In October 1982, the Commission issued a decision prescribing a fair buy-in price for joint operation of a rail line constructed to serve the coal-rich Powder River Basin in Wyoming.[58] In 1976, the Commission authorized the joint construction of a single line by the Burlington Northern Railway Company (BN) and the Chicago and North Western Transportation Company (CNW). To minimize adverse environmental impacts, the Commission refused to authorize the construction of two lines into the basin. Joint operation was authorized to allow the two competing railroads to originate coal movements in the basin, and the project was constructed by the BN. Afterwards, the two railroads were unable to agree on a fair price for CNW to compensate the BN for its share of the construction costs. The Commission found $76,193,880 to be the fair price for an undivided one-half interest in the line.

The Commission began consideration of an application filed by the Tongue River Railroad Company, a limited partnership consisting of Transportation Properties, D.S. Cartage Corporation, Otter Creek Transportation Company, and Tongue River Holdings, Inc., seeking authority to construct and to operate an 89-mile rail line between Miles City, Mont., and two terminal points, one in Rosebud County, and one in Powder River County, Mont.[59] The rail line will handle coal shipments.

[56] No. 38676, *Changes in Routing Provisions — Conrail, July 1981* (not printed), decided August 12, 1983.

[57] Finance Docket No. 28272, *Star Lake Railroad Company — Railroad Construction and Operation in McKinley County, NM* (not printed), decided May 12, 1983.

[58] Finance Docket No. 29066, *Chicago and North Western Transportation Company Approval of Terms of Construction, Ownership and Operation of a Line of Railroad in Campbell and Converse Counties, Wyoming* (not printed), decided October 20, 1982.

[59] Finance Docket No. 30186, *Tongue River Railroad Company Rail Construction and Operation in Custer, Powder River, and Rosebud Counties, MT* (not printed), decided May 12 and August 18, 1983.

The Commission also considered applications involving the purchase and operation of portions of lines owned by the bankrupt Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Chicago, Rock Island and Pacific Railroad Company (Rock Island). The most extensive of these proceedings addressed the purchase and operation of over 700 miles of Rock Island lines. In June 1983, the Commission approved inconsistent applications by Midwestern Rail Properties, Inc., a subsidiary of Chicago and North Western Transportation Company (CNW), and the Soo Line Railroad Company (Soo) to acquire Rock Island's "Spine Line" and additional properties.[46] The Commission recommended both the Soo and the CNW proposals to the bankruptcy court. The court, in turn, approved the sale of the lines to the CNW. After the court's approval, Rock Island and CNW consummated the acquisition.

The Commission continued to issue modified certificates under which a railroad may operate over an abandoned line that has been acquired by a state or state agency. Parties seeking such modified certificates applied under reformed procedures.[47]

The Commission also promulgated an expedited modified procedure to issue a decision and certificate in connection with the transfer of all properties of the Alaska Railroad to the State of Alaska.[48]

Abandonments

Abandonments before the Commission were filed under the provisions of the Interstate Commerce Act and under two other statutes affecting only the Consolidated Rail Corporation (Conrail) and bankrupt railroads (including the Milwaukee Road and Boston & Maine).

Conrail continued its active abandonment program which began with the enactment on August 13, 1981, of the Northeast Rail Service Act of 1981 (NERSA). In fiscal year 1983, Conrail filed 46 applications to abandon 367 miles of line. Fifteen of those applications involving 119 miles were granted, and 16 involving 203 miles were pending. Applications involving 45 miles were dismissed after Conrail and interested parties reached agreement for the sale of the lines, or accepted the Commission-imposed terms of sale. At the end of fiscal year 1983, there were an additional 79 notices of insufficient revenues—involving 380 miles of track—on file with the Commission, thus indicating that applications to abandon those lines would be filed in fiscal year 1984. Moreover, Conrail has indicated its intention to file approximately 275 additional applications to abandon lines under NERSA in fiscal year 1984 prior to the expiration of the NERSA abandonment provisions within the fiscal year.

During the past fiscal year, the Commission recommended to various bankruptcy courts that eight applications to abandon 173 miles be authorized.

During the same period, other railroads were also actively pursuing efforts to rationalize their systems. A to-

[46] Midwestern Rail Prop., Inc.—Pur.—Rock Island, 366 I.C.C. 915 (1983).

[47] Application Proc.—Construct. Acq. or Oper. R. Lines, 365 I.C.C. 516 (1982).

[48] Ex Parte No. 446, Alaska Railroad Certification (not printed), decided June 13, 1983.

tal of 123 applications involving 3,160 miles were filed, at the end of fiscal year 1983, 41 applications for 1,614 miles, and 11 notices of intent to abandon 237 miles were pending. The Commission issued decisions on the merits of 109 applications involving 2,281 miles. Of these, 100 applications involving 2,162 miles were granted, two involving 28 miles were denied (although appeals to the entire Commission are pending on both), and seven involving 91 miles were dismissed because of the railroad's failure to comply with certain statutory and regulatory provisions. A review of the records indicates that 34 of the abandonment decisions involving 520 miles were automatically granted because they were not opposed. In cases where there was opposition, the Commission decided not to investigate 42 cases involving 917 miles, to set 30 cases involving 942 miles for modified procedure, and to set four cases involving 315 miles for oral hearing. Numerous railroads also took advantage of the Commission's exemption power to abandon rail lines.[63]

The number of persons making offers of financial assistance continued to grow during the fiscal year. Seventeen offers (16 to purchase lines and one to subsidize continued operations) involving 411 miles were made, and at the end of the fiscal year four offers involving 47 miles were pending. During the year, four lines were sold resulting in the transfer of 235 miles of line. In addition, two important decisions dealing with offers of financial assistance were issued. On June 13, 1983, the Commission issued a notice of proposed rulemaking to modify the existing regulations governing offers of financial assistance.[64] The most important proposal was to simplify the offer process by reducing the amount of evidence to be shown to demonstrate that an offer is a reasonable one and that the offeror is financially able either to acquire and operate the line, or to subsidize continued operations. In fiscal year 1983, the Commission additionally determined that labor protection is neither required nor permitted in sales transactions which take place according to the offer of financial-assistance provisions.[65]

Feeder Railroad Program

The Feeder Railroad Development Program authorizes the Commission to require a railroad to sell its rail line under certain circumstances. Such circumstances arise if: (1) it is found that the public convenience and necessity require or permit a sale, and (2) the lines have been identified for potential abandonment. The purpose of the feeder railroad development program is to provide shipper groups and communities with an alternative to inadequate rail service or abandonment, and an opportunity to preserve feeder lines prior to the total downgrading of such lines.

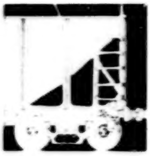
In February 1983, the Commission modified its existing regulations governing the program.[66] Generally, the existing regulations were modified (1) to eliminate all pre-application notice requirements, (2) to expedite consider-

[63] See the "Exemptions" section of this chapter.

[64] Ex Parte No. 274 (Sub-No. 9), *Abandonment of Railroad Lines and Discontinuance of Service — Offers of Financial Assistance* (not printed), decided June 7, 1983.

[65] *Illinois Central Gulf R. Co. — Abandonment*, 366 I.C.C. 911 (1983).

[66] *Feeder Railroad Development Program*, 367 I.C.C. 261 (1983).



ation of applications, and (3) to allow interested parties an opportunity to file competing applications for the acquisition of the same feeder line. The Commission also set forth its policy governing feeder-line and related abandonment applications, namely (1) that any feeder-line application involving all or any portion of a line which is the subject of an abandonment application filed prior to the feeder line application would be rejected, and, (2) that feeder-line applications and subsequently filed abandonment applications would be processed simultaneously.

No feeder-line applications were filed during fiscal year 1983.

Exemptions

The Commission employed its exemption authority to facilitate numerous, minor rail-carrier transactions, and to reduce significantly the scope of railroad regulation.

The Commission granted over 155 exemptions of individual finance transactions, including acquisitions, abandonments, new operations, lease-and-trackage-rights agreements, and securities issuances. It also created a class exemption for abandonments of rail lines that have been out of service at least two years,[67] and proposed a class exemption for discontinuance of service and discontinuance of trackage rights over out-of-service lines.[68] These individual and class exemptions were granted when either the transportation or public impact of the transaction was minimal, or when regulation was unnecessary to protect shippers from abuses of market power.

More than 650 individual exemptions from regulatory requirements applicable to railroad rates were granted. These concerned matters such as payments of reparations, waivers of undercharges, and the filing of railroad rate contracts to become effective on less than 30 days' notice.[69] The Commission adopted a new procedure in May 1983 that allows contracts to become effective routinely on the day of filing, thereby eliminating the need for future requests.[70] Another special exemption granted by the Commission permitted the Norfolk and Western to lease rail cars to shippers at storage facilities at market rates below prescribed car-hire rates.[71]

In decisions applicable to all railroads, the Commission reduced its regulation of railroad rates by granting exemptions for liquid iron chloride,[72] iron sulphate,[73] miscellaneous agricultural commodities,[74] export coal,[75] and boxcar traffic.[76] The first three commodity categories were exempted be-

[67] *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

[68] Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights)* (not printed), decided June 3, 1983.

[69] Ex Parte No. 387 (Sub-Nos. 291-957), *Exemption for Contract Tariffs to be filed on One Day's Notice* (not printed), decided October 1, 1982 to August 22, 1983.

[70] *Contract Implementation Date*, 367 I.C.C. 399 (1983). Although contracts are permitted to become effective immediately, they remain subject to Commission review for 30 days.

[71] Ex Parte No. 346 (Sub-No. 12), *Petition to Exempt Storage Leases of Norfolk and Western* (not printed), decided March 2, 1983.

[72] *Liquid Iron Chloride*, 367 I.C.C. 347 and 473 (1983).

[73] *Iron Sulphate Exemption*, 367 I.C.C. 503 (1983).

[74] *Rail General Exemption Authority—Miscellaneous Agricultural Commodities*, 367 I.C.C. 298 (1983). This exemption embraces all farm products not previously exempt, except grain, soybeans, and sunflower seed.

[75] *Railroad Exemption—Export Coal*, 367 I.C.C. 570 (1983).

[76] *Exemption from Regulation—Boxcar Traffic*, 367 I.C.C. 425 (1983).

cause their rail transportation was limited in scope and subject to competition from other modes of transportation. The export coal and boxcar exemptions, while broader in scope, were also based on market constraints on ratemaking abuse.

A majority of the Commissioners, Chairman Taylor dissenting, concluded that strong and growing competition in foreign coal markets effectively limits the rates that American railroads can charge on export coal movements. The market power of individual railroads is also constrained by intramodal, intermodal, and geographic competition within the U.S. export coal market. Historically, railroads have exercised greater restraint in the pricing of export coal transportation than regulation would require, thus demonstrating that market forces are sufficient to assure reasonable rates on this traffic. The majority expects the exemption to be beneficial in allowing greater ratemaking flexibility and fostering more responsive pricing of railroad service. After both the Commission and a United States Court of Appeals denied requests for a stay, the export coal exemption became effective September 12, 1983.

In the case of boxcar service, a majority of the Commission concluded that competition from motor carriers, intramodal operators, product and geographic competition, and shipper leverage, make continued regulation of most boxcar rates unnecessary.[77] The Commission also approved a partial exemption of boxcars from car-hire regulation. The exemption does not terminate the prescription of car-hire rates for boxcar equipment, but it allows car owners and users to negotiate different car-hire rates at their option. It also allows railroads to impose limited mileage charges for returning empty equipment at an owner's request, and to reclaim car hire on idle foreign cars stored on their lines longer than three days, in the absence of other mutually agreed terms. These changes are expected to make car-hire payments more responsive to market forces and to discourage unnecessary empty car movements. The exemption was scheduled to become effective January 1, 1984, except for Class III railroads' owned or leased cars for which the partial car-hire exemption will become effective July 1, 1984.[78]

In another exemption proceeding of general applicability, the filing of rate changes was simplified by exempting railroads from requesting prior approval for the filing of rates that depart from statutory long-and-short-haul provisions.[79] Now under consideration are general exemptions for the transportation of frozen food[80] and poultry, meat, and dairy products.[81]

[77] The Commission retained jurisdiction over boxcar rates on nonferrous recyclable commodities in order to enforce the rate standard established for these commodities in 49 U.S.C. 10731(e).

[78] These revised effective dates were announced in the Commission's decision denying petitions for reconsideration of the exemption. *Exemption from Regulation Boxcar Traffic*, 367 I.C.C. 747 (1983).

[79] *Rail General Exemption Authority — Long and Short Haul Transportation*, 367 I.C.C. 234 (1983).

[80] Ex Parte No. 346 (Sub-15), *Exemption from Regulation — Rail Transportation Frozen Food* (not printed), decided February 3, 1983.

[81] Ex Parte No. 346 (Sub-No. 18) *Exemption from Regulation — Poultry, Meat and Dairy Products* (not printed), decided September 19, 1983.

Passenger Service

Two significant rail passenger-service discontinuance applications were filed[82] during the past fiscal year.

First, by petition filed February 9, 1983, the Southern Pacific Transportation Company proposed to discontinue a commuter service to Los Angeles, Calif.,[83] and oral hearings were held.

Second, the Denver and Rio Grande Western Railroad Company, (D&RGW) notified the Commission on March 16, 1983, of its intent to discontinue, on April 25, 1983, its Rio Grande Zephyr between Denver, Colo., and Salt Lake City and Ogden, Utah. The Commission declined to investigate, and service to these cities and intermediate points was assumed by Amtrak, which then rerouted its San Francisco Zephyr over the D&RGW, and discontinued its route over the Union Pacific Railroad Company line through Wyoming and Utah.[84] The Commission is without authority to consider Amtrak's route changes.[85]

The Commission retains authority to require a railroad to provide services or the use of its tracks or facilities for Amtrak, and to set the terms and compensation in the event Amtrak and private railroads or regional transportation authorities are unable to agree on either or both.[86] In the Northeast Corridor, on the other hand, commuter and freight services make frequent use of Amtrak property. The Commission has adopted an avoidable costing methodology for compensating Amtrak for use of properties by commuter and freight services.[87]

The Commission revised its regulations on the discontinuance and change of train or ferry service.[88] The revision gives railroads greater operational flexibility by eliminating unnecessary and redundant informational requirements, and streamlining procedures.

During fiscal year 1983, designated Commission agents in the Office of Compliance and Consumer Assistance issued 21 emergency orders which prevented interruption of rail passenger service by permitting Amtrak passenger trains already enroute to utilize alternate routing. Such orders are necessary whenever a railroad operating an Amtrak train cannot operate over its normal route because of circumstances beyond its control, and when another route exists over a connecting carrier.[89]

Freight Car Service

During the first three quarters of fiscal year 1983, freight carloadings were down from fiscal year 1982, and this decline caused a surplus of equipment near the unprecedented surplus levels of the previous year. Railroads

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[82] 49 U.S.C. 10908, 10909.

[83] Finance Docket No. 30125, *Southern Pacific Transportation Company—Discontinuance of Passenger Train Service in Ventura and Los Angeles Counties, CA.*

[84] Finance Docket No. 30151, *The Denver & Rio Grande Western Railroad Company—Discontinuance of Passenger Trains Nos. 17 and 18 Between Denver, CO and Salt Lake City and Ogden, UT and Intermediate Points* (not printed), decided May 9, 1983.

[85] Rail Passenger Service Act of 1970, 45 U.S.C. 546(a).

[86] 45 U.S.C. 562(a).

[87] *Costing Methodologies—NE Corridor Commuter Serv.*, 367 I.C.C. 192 (1983), undertaken pursuant to section 1163(a) of the Northeast Rail Service Act of 1981.

[88] *Discontinuance of Change of Train or Ferry Service*, 366 I.C.C. 877 (1983). The original limitation to passenger service was deleted in the final rules.

[89] 45 U.S.C. 562(c).

were faced with the continued logistical problem of storing vast numbers of rail cars and, at the same time, maintaining a viable car fleet. However, an upsurge in the economy during the last quarter of fiscal year 1983 contributed to an 8-percent increase of traffic over the same period in fiscal year 1982, and resulted in a substantial reduction in freight car surpluses. The average daily surplus at the end of December 1982 was 291,948 cars; it dropped to a daily average of 175,551 cars by the end of September 1983 for a daily average during the fiscal year period of 241,550 cars.

On October 1, 1982, Class I railroads reported ownership of 1,059,006 cars, but by October 1, 1983, car ownership had dropped to 1,018,171 cars—a reduction of 40,835 cars in the combined fleet of cars owned by Class I railroads. Freight car retirements in fiscal year 1983 totaled 43,847 cars. During this period, 3,012 cars were acquired. The entire car fleet of Class I, of Class II, and Class III carriers, private car companies, and shippers consisted of 1,552,715 cars—a reduction of 64,522 cars in fiscal year 1983.

Class I railroads reduced their locomotive ownership from 27,291 units on October 1, 1982, to 25,913 units on October 1, 1983, a total decrease of 1,378 units. As of October 1, 1983, Class I railroads had 158 diesel freight locomotives on order.

The carrying capacity of the average freight car installed in fiscal year 1983 was 97 net tons, an increase of 12 net tons over cars installed in 1973. During this 10-year period, there was an average net gain of 1.2 tons per car per year in the carrying capacity of cars installed. The aggregate carrying capacity of cars installed in fiscal year 1983 was 294,164 tons; the capacity of those retired was 3,069,290 tons, resulting in a net loss of 2,777,126 tons of aggregate capacity.

Freight carloadings during the fiscal year decreased 5.1 percent, or 986,859 cars below fiscal year 1982. Grain and coal traffic comprised 35.5 percent of all carloadings. While grain loadings increased by 1.9 percent, or 24,948 cars, coal loadings were down 12.3 percent, or 731,115 cars. Other major bulk commodity groups also showing a decrease were metallic ores, which were down 22.5 percent, and metal products, which declined by 23.7 percent. Trailer-on-flatcar/container-on-flatcar traffic respectively increased by 19.4 percent, or 361,754 cars, and by 16.7 percent, or 538,988 trailers/containers.

Through the combined efforts of the U.S. and Mexican governments and the cooperation of railroads in both countries, the excessive accumulation of U.S. railway cars in Mexico during fiscal year 1982 was reduced to manageable levels. Two minor exceptions occurred late in fiscal year 1983, but in both instances short-term embargoes corrected the situations. These embargoes were placed by the Mexican railways through the Association of American Railroads.

During fiscal year 1983, 48 emergency orders were issued in conjunction with rail operations. A major part of this activity provided for the continuation of essential rail services through service and rerouting orders to shippers located on the lines of the bankrupt Rock Island and Milwaukee Railroads. Under the Rock Island Railroad Transition and Employee Assis-

tance Act, the Commission may authorize willing interim operators to provide temporary service during the bankruptcy process to shippers which would otherwise be deprived of essential rail transportation.

Securities

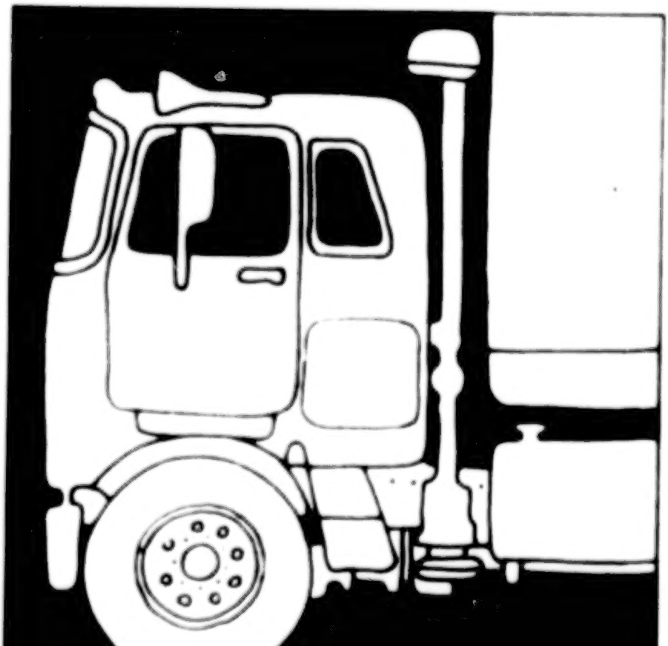
Twenty-one applications to issue securities were filed by railroads in fiscal year 1983, along with two requests for exemption from competitive bidding.

Railroads were authorized to issue approximately 3,198,630 shares of stock for all purposes; $3,198,630 principal amount of notes, and $14,634,450 principal amount of bonds. They were also authorized to assume obligations and liabilities of $18,974,000, principal amount of bonds, and of $289,707,000, principal amount of equipment-trust certificates.

The issue of equipment-trust certificates continued to decline as compared to the $352,704,545 principal amount issued in the fiscal year ending September 30, 1982, and the $877,444,359 principal amount issued in the fiscal year ending September 30, 1981. This continued to reflect a surplus of railroad equipment which developed because of the slowdown in the economy.

The Commission eliminated regulations pertaining to Part V loan guarantees for which authority to extend new loans expired in 1963. The Commission also eliminated its regulations[90] governing changes in the financial structure of railroads not in receivership or reorganization. Only one railroad continues to have outstanding Part V guaranteed loans, and proceedings to modify railroad securities without resort to bankruptcy have been very rare. The Commission concluded that the maintenance of separate regulations to cover these matters is no longer necessary. Future applications for changes in financial structure will be handled on a case-by-case basis.[91]

[90] *Elimination and Modification of Certain Securities Regulations*, 367 I.C.C. 413, (1983).
[91] Elimination and Modification of Certain Securities Regulations, 367 I.C.C. 413, (1983).



TRUCKING COMPANIES

General Financial Condition

Due to the pickup in the Nation's economy and adjustments to a reduced regulatory environment, earnings of the trucking industry improved since the beginning of 1983. Operating results for the 100 largest companies for the 12 months ending September 30, 1983, show that the prior trend of decreased profitability has been arrested. Earnings for these companies for each of the first three quarters of calendar year 1983 were substantially higher than the comparable periods of 1982. These were the first year-to-year quarterly increases in earnings for the 100 largest trucking companies since the second quarter of 1981.

As a result of the large broad-based earnings improvement in the first nine months of calendar year 1983, net carrier operating income of the 100 largest trucking companies for the 12 months ending September 30, 1983, increased 121.5 percent to $528.3 million, compared to the same period of 1982. Net income rose 119.0 percent to $278.4 million. Operating revenues also increased by 2.8 percent to $15.9 billion, despite a 2.5-percent decline in revenue tons hauled. Rate of return on shareholders' equity increased to 9.59 percent from 4.28 percent.

As the economy continues to recover, traffic volume should likely improve and earnings should further increase. An evaluation of the impact of reduced regulation on profitability can better be made by a comparison of industry earnings during a strong, prolonged, and sustained economic recovery which, it is hoped, has already begun.

Mergers and Unifications

Under Section 11343(e) of Section 21 of the Bus Regulatory Reform Act of 1982 (Bus Act), the Commission is authorized, in a matter related to a motor carrier of property, to exempt a person, class of persons, transaction, or class of transactions from the merger, consolidation, and acquisition provisions of the Act. To implement the new exemption authority, the Commission has established procedures to process such exemption petitions on an individual basis.[1]

The exemption procedures have been well received by the trucking industry. Regulatory approval for proposed finance transactions may be obtained with relative ease. From the adoption of the exemption procedures on November 19, 1982, to the close of the fiscal year, 432 petitions for exemption have been filed. The majority of these petitions involve the acquisition of operating authority or of stock control of another regulated carrier. The permanent lease of operating rights and consolidations and mergers are also considered under these procedures.

Exemptions are granted if they would further the national transportation policy,[2] if the transactions involved are of limited scope, or if regulation is unnecessary to protect shippers from the abuse of market power.[3] Under these standards, the Commission has exempted significant transactions, including the merger of two

[1] Procedures — Handling Exemptions Filed by Motor Carriers, 367 I.C.C. 113 (1982).
[2] The National Transportation Policy, 49 U.S.C. 10101.
[3] 49 U.S.C. 11343(e)(1).

large transcontinental carriers of general commodities.[4]

To facilitate the ongoing consolidation process, the Commission proposed a class exemption of motor finance transactions under which individual transactions could be consummated 60 days after notice of the transaction is published in the *ICC Register*.[5] Although they would not qualify for treatment under the Commission's exemption authority if done so, transfers of operating authority from a carrier to a noncarrier may be considered under Section 10926, rather than under Sections 11343-11344. The Commission has proposed to amend its transfer regulations to permit small motor carriers of property and noncarriers to use the class exemption procedures which would otherwise be made available only to larger carriers.[6]

In other significant motor finance proceedings, the Commission determined that restriction-removal authority issued under Section 10922 may not be transferred separately from the authority upon which it is based.[7] In addition, the Commission re-examined its policy concerning the sale and retention of duplicate operating authority, i.e., "splitting", and concluded that the splitting of operating rights is not contrary to the public interest, absent a showing of public harm after notice and opportunity for comment.[8]

Under Section 11342, the Commission may authorize motor carriers to pool or divide their traffic where the pooling arrangement will be in the interest of better service to the public or of operational efficiency, and will not unreasonably restrain competition. The Commission recently authorized a large household goods carrier to restrict the scope of its pooling service to carriers-agents holding limited operating authority.[9]

Securities

In fiscal year 1982, the Commission approved two applications involving the issuance of securities by trucking companies. In one proceeding, the issuance of 1,800,000 shares of stock under an employee stock purchase plan was authorized.[10] In the other, the Commission authorized a company to guarantee $4,125,000 in industrial revenue bonds issued by public authorities for the purpose of constructing terminal facilities.[11]

Section 19 of the Bus Act repealed 49 U.S.C. 11302, and thereby eliminated the Commission's jurisdiction over the issuance of securities by trucking companies. Jurisdiction over public offerings was transferred to the Securities and Exchange Commission. In response to its diminished statutory oversight of financial transactions, the

[4] No. MC-F-15195, *Ryder Truck Lines, Inc.—Merger Exemption—Pacific Intermountain Express Co.; PIE Bulk Transport, Inc.—Purchase Exemption—Pacific Intermountain Express Co.* (not printed), decided June 15, 1983.

[5] Ex Parte No. 55 (Sub-No. 57), *Exemption of Certain Transactions Under 49 U.S.C. 11343* (not printed), decided June 1, 1983, 48 Fed. Reg. 26485 (June 8, 1983).

[6] See Transfers of Operating Rights Under 49 U.S.C. 10926, 49 CFR Part 1181.

[7] *Stewart Trucking Co., Inc.—Transferee—Transferor*, 127 M.C.C. 793 (1982).

[8] *Bouma, d/b/a Bouma Transp.—Transferee—Shoemaker*, 127 M.C.C. 807 (1983).

[9] *Atlas Van Lines, Inc.—Pooling*, 127 M.C.C. 799 (1983).

[10] Finance Docket No. 30056, *Gordons Transport, Inc.—Stock* (not printed), decided November 5, 1982.

[11] Finance Docket No. 30041, *Viking Freight System, Inc.—Assumption of Obligation and Liability* (not printed), decided October 18, 1982.

Commission modified its securities regulations.[12]

Further, the Commission removed extraordinary financial conditions previously imposed on carrier and noncarrier holding companies of motor carriers and their motor carrier subsidiaries.[13] As a result of the freer entry policy permitted by the Motor Carrier Act of 1980, the more competitive industry environment has lessened the public need for regulations to prevent the financial mismanagement of individual companies. Because many companies hold broad operating authorities, adequate service is assured despite the financial failure of an individual company.

Because the Commission's securities jurisdiction is now limited to the oversight of railroads, the Commission's Finance Board was eliminated and the remaining securities applications are now decided by the Commission's Review Board.[14] As a result of recent changes in the Bankruptcy Act,[15] the Commission also removed its remaining regulations governing the reorganization of trucking companies.[16]

Rates

The Commission initiated a proceeding to review the enormous changes in the motor transportation industry since passage of the Motor Carrier Act of 1980, and to determine what the Commission could do to facilitate the industry's transition.[18] Interested parties were asked to present their views on pricing techniques now being developed by the trucking industry, and on the effect these practices have had and will have upon shippers, carriers, and consumers. The results of this fact-finding study indicated that new pricing practices have greatly benefited the shipping public, and have led to increased carrier efficiency and heightened marketing sensitivity. The results of the study also reinforced the Commission's earlier conclusions that restrictions on innovative ratemaking would have a chilling effect on legitimate competition, and that a case-by-case analysis should be used to determine the lawfulness of motor carrier prices and practices.[19] Finally, the Commission concludes that *ex post* remedies should be used if anticompetitive behavior requires restraint.

The Commission proposed to expand the present zone of rate freedom (ZORF) from 10 percent to 15 percent.[20] The ZORF permits trucking companies and freight forwarders to reduce or increase rates by 10 percent without regulatory interference. The Commission is authorized to increase the zone by up to five percentage points during any one-year period if it

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[12] *Elim. & Modification Securities Regulations*, 367 I.C.C. 413 (1983).

[13] *Removal of Extraordinary Financial Conditions*, 366 I.C.C. 874 (1983).

[14] Ex Parte No. 430, *Elimination of the Finance Board and Transfer of Its Remaining Function to the Review Boards* (not printed), decided September 30, 1982, 47 Fed. Reg. 44516 (October 7, 1982).

[15] Corporate Reorganization of Motor Carriers, 49 CFR 1192.

[16] Ex Parte No. 432, *Reorganization of Rail and Motor Carriers* (not printed), decided March 10, 1983.

[18] Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980* (not printed), decided August 26, 1983.

[19] *Lawfulness of Vol. Discount Rates — Mot. Com. Car.*, 365 I.C.C. 711 (1982).

[20] Ex Parte No. MC-169, *Expansion of Zone of Reasonableness for Motor Common Carriers of Property and Freight Forwarders* (not printed), decided April 29, 1983.

finds that there is sufficient actual and potential competition to regulate rates, and that carriers or freight forwarders, shippers, and the public will benefit from increased rate flexibility. The present economic climate, brought about by regulatory reforms and intensified competition, indicates that an adjustment to the ZORF is warranted to permit adequate rate flexibility in response to new market demands. Comments were solicited on the five-percent expansion proposal, on the proposed cumulative increases in the ZORF boundaries, and also on a proposal to streamline the tariff-filing requirements governing rates and charges filed pursuant to zone-of-rate-freedom authority.

In response to the upsurge in price and service competition, the Commission proposed to reduce the generally applicable 30-day notice period for independent rate filings by trucking companies and by freight forwarders. Under the proposal, rate reductions and new rates would be permitted to become effective on one day's notice, and rate increases would be permitted to become effective on five days' notice. Given the increased importance of a carrier's ability to respond quickly to new market demands, the 30-day notice period appeared to constitute a significant and unnecessary burden both on individual companies and on the industry as a whole. Adoption of the proposal would reduce the large number of special permission applications for short-notice rate effectiveness currently being received.

In another proceeding of potentially broad significance, the Commission proposed to withdraw antitrust immunity for collective ratemaking activities with respect to rates applicable to shipments under 1,000 pounds. Small shipper associations allege that collective ratemaking on small less-than-truckload shipments appeared to inhibit competition and unduly discourage independent ratemaking. The Commission also solicited comments in this proceeding on whether antitrust immunity should be withdrawn from any other areas of motor rate bureau activities or entirely eliminated.

Regulation of motor contract carriers of property was significantly reduced through the waiver of otherwise applicable tariff-filing requirements. That action is now effective as the result of a decision of September 28, 1983, issued by the United States Court of Appeals for the District of Columbia Circuit and vacating its previously imposed stay. The appeal in that proceeding remains under consideration by the Court.

The Commission required revision of the National Motor Freight Classification (NMFC) so that it would contain only information regarding the transportation characteristics of commodities. Specifically, the Commission condensed the 15 traditional transportation characteristics used in making a classification into four relevant factors. This action was designed to further competitive and efficient transportation pricing.

[illegible]

[illegible]

[illegible]

In a related proceeding, the Commission found unlawful the publication in the National Motor Freight Classification of the proposed order-notify rule and charge, and all other rules and charges unrelated to classificiation.[25] The Commission directed the National Classification Committee (NCC) to remove from the NMFC all such rules and charges pending further comment by the National Motor Freight Traffic Association and other affected rate bureaus. NCC compliance with the decision was postponed until 30 days after service of a decision reviewing public comments.

The Commission has received over 40 motor carrier of property rate bureau agreements, nine of which were filed by large, general-commodity rate bureaus. At the end of the fiscal year, roughly one-quarter of the pending agreements had been reviewed. Additionally, a petition by one rate bureau to merge with another is now awaiting action by the Commission. Also pending before the Commission is the first of several petitions filed by larger, general-commodity rate bureaus seeking to expand the territorial scope of their collective ratemaking activities.

Operating Rights

In accordance with the Motor Carrier Act of 1980, the Commission continued to promote competition and operating efficiency in the motor industry through relaxation of entry criteria, revision of decisional standards, and reduction of service restrictions on motor operations. This process has required reconsideration and refinement of various policies and regulations governing the service commitment and licensing prerequisites applicable to trucking companies.

The Commission terminated its examination of the common carrier service obligation as affected by the enhanced competitive environment and liberalized entry policies. Concluding that certificates continue to provide an effective measure of carriers' "holding out", the Commission embraced the view of recent judicial interpretations which acknowledged practical limitations on service capacity and found that, in the context of more expansive service authorizations, a company need only provide service nondiscriminatorily to the extent of its actual operating capabilities.[26]

A significant number of Commission licensing decisions have reflected this commitment to broad, unencumbered service authorizations which encourage the development of potential competition, are conducive to responsive operations, and ensure that operational feasibility will not be compromised. The Commission reaffirmed that requests for authority need not be premised on shipper support if such factors as operating efficiencies, rationalizing and complementing existing authority, and the prospective advantages of expanded service are present.[27] Decisions granting new operating authority

[25] *Charges—Shipments Moving on Order—Notify Bill of Lading*, [illegible] I.C.C. [illegible] (1983), clarified at No. [illegible] M [illegible], *Charges for Shipments Moving on Order—Notify Bill of Lading N.M.F.T.A.* (not printed), decided October 14, 1983.

[26] Ex Parte No. MC-77 (Sub-No. 3), *Elimination of Certificates as the Measure of "Holding Out"* (not printed), decided March 16, 1983.

[27] No. MC-121496 (Sub-No. 80), *Enterprise Transportation Company—Extension Southeastern States* (not printed), decided June 6, 1983.

were based on representative, rather than comprehensive, commodity and territorial service needs.[28]

To implement the removal of facilities restrictions from territorial service authorizations,[29] the Commission announced procedures for handling petitions to relieve their existing authorities of facilities limitations.[30] Requests for elimination of facilities restrictions have been favorably entertained according to both the reopening[31] and new application[32] options.

The Commission also encouraged unrestricted service authorizations in the context of substituted-motor-for-abandoned-rail applications, and found territorial and commodity service restrictions on such authority to be impediments to a complete substitution for discontinued rail operations, and detrimental to both shipper and carrier interests.[33]

In compliance with court decisions,[34] the Commission proposed revisions to the regulations governing applications for new operating authority[35] and removal of restrictions from existing authority.[36] The proposed revised rules permit applicants to seek any reasonably broad commodity service description, require applicants seeking to serve bulk or household goods traffic in accordance with general commodities authority only to establish their fitness, willingness, and ability to provide such specialized services, and prescribe that applicants seeking to serve Alaska and/or Hawaii under nationwide authority demonstrate a public need for the service, as well as their fitness, willingness, and ability to serve those states.

Also in response to a judicial mandate and the corresponding revision of application regulations, the Commission addressed the issue of general commodities carriers' fitness, willingness, and ability to provide specialized services, particularly bulk transportation. Requests for bulk service operations (1) need not be as extensive as proposed service to general commodities,[37] (2) need not be reflected in an applicant's previous operating experience,[38] and (3) may be proposed by an applicant presently possessing no bulk

[28] No. MC-106398 (Sub-No. 14), *Knapp's Express, Inc.—Extension General Commodities* (not printed), decided August 15, 1983.

[29] Announced previously in *Eckert Trucking, Inc. Ext.—Building Materials*, 132 M.C.C. 829 (1982).

[30] No. MC-141033 (Sub-No. 95)X, *Continental Carriers, Inc.—Territorial Boardening* (not printed), decided January 18, 1983.

[31] No. MC-119774 (Sub-No. 116), *Eagle Trucking Company* (not printed), decided March 10, 1983.

[32] No. MC-109596 (Sub-No. 28), *Rex Transportation, Inc.—Extension, Clay and Concrete* (not printed), decided May 2, 1983.

[33] No. MC-138225 (Sub-No. 14), *Hedrick Associates, Inc.—Substitution—Motor for Rail* (not printed), decided October 20, 1982.

[34] *American Trucking Associations v. I.C.C.*, 659 F.2d 452 (5th Cir. 1982), clarified and enforced by mandamus in 669 F.2d 957 (5th Cir. 1982), cert. denied 51 U.S.L.W. 3647 (1983).

[35] Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, 48 Fed. Reg. 36285 (August 10, 1983) and Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions from Authorities of Motor Carriers of Property*, 48 Fed. Reg. 36290.

[36] Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions from Authorities of Motor Carriers of Property* (not printed), decided August 10, 1983.

[37] No. MC-151703 (Sub-No. 12), *Norsub, Inc.—Extension—Nationwide General Commodities* (not printed), decision of Appellate Division 2, decided September 20, 1983.

[38] No. MC-166121, *BHL Transport, Inc.—Common Carrier Application* (not printed), decision of Appellate Division 1, decided September 1, 1983.

authority or specialized equipment.[39] However, assurances of a carrier's fitness, willingness, and ability to provide bulk service within the context of its general commodities authority is required.[40] If indicators of the statutory fitness requirements have been found lacking, bulk commodities are excluded from general commodities service authorizations.[41]

Bulk service provided by general commodities carriers was distinguished from service by carriers operating under specific commodity authorizations. In the latter instance, imposition of service restrictions against the transportation of specific commodities in bulk form was determined to hinder enhanced competition and transportation efficiency.[42] Accordingly, applicants seeking specific commodity service authorization need only establish their general fitness to provide the service, and are not required to show fitness for bulk transportation.[43]

Expansion of contract carriers' service potential to include industry-wide service was proposed and examined under the revised statutory provisions of Section 10923, which no longer defines contract carriage in terms of service to a limited number of shippers. The Commission encouraged applications for industry-wide contract authority to broaden grants of authority, and to promote more intensive competition among contract carriers.[44] A significant number of industry-wide contract carrier authority grants have been issued under this policy, including service authorizations based on the service needs of the involved industry group, and without the actual support of potential contracting shippers.[45]

Applications for expansive, flexible contract authority may designate classes of shippers on the basis of either the commodities to be transported or specialized transportation services, and may identify contracting entities by commercial name.[46] The Commission also found that permits authorizing service to specified contracting shippers also allow the provision of service to divisions and subsidiaries.[47]

To ensure consistency with the Motor Carrier Act's pro-competitive mandate, the Commission allows shippers having available contract carrier service to support an application for co-extensive common carrier authority. To assist shippers served by contract carriers from being forced to enter into, or

[39] No. MC-154636, *W. S. Stewart Corporation Common Carrier Application* (not printed), decision of Appellate Division 2, decided May 31, 1983.

[40] No. MC-144945 (Sub-No. 3), *A & L Transport, Extension — Nationwide General Commod[illegible]* (not printed), decision of Appellate Division 1, [illegible] decided March 10, 1983.

[41] [illegible] MC-163257, *Dennis Cappello d/b/a Bulk Transportation Co. Common Carrier Application* (not printed), decision of Appellate Division 1, decided February 11, 1983.

[42] No. MC-143776 (Sub-No. 34), *C.D.B. Incorporated Extension — Texas* (not printed), decided February 25, 1983.

[43] No. MC-81451 (Sub-No. 13), *Cargo Transport, Inc. — Common Carrier Application* (not printed), decided February 25, 1983.

[44] Ex Parte No. MC-165 (Sub-No. 1), *Motor Contract Carriers of Property — Proposal to Allow Issuance of Permits Authorizing Industry Wide Service*, 48 Fed. Reg. 24397 (June 1, 1983).

[45] No. MC-20722 (Sub-No. 45), *M & G Convoy, Inc., Extension — Motor Vehicle Transportation* (not printed), decided June 15, 1983.

[46] No. MC-19201 (Sub-No. 148), *Pennsylvania Truck Lines, Inc. — Contract Carriage Intermodal Traffic* (not printed), decided October 5, 1983.

[47] No. MC-114211 (Sub-No. 509), *Warren Transport, Inc., Extension — Tiger International, Inc.* (not printed), decided November 23, 1982; No. MC-164587, *Circle W Trnasportation, Inc.* (not printed), decided August 30, 1983.

remain parties to contracts in order to receive transport services, the Commission invited contracting shippers to make known their expanded service needs through supporting applications for common carrier authority by their contract carriers.[48] The Commission also found acceptable as support the transportation needs of shippers having a corporate affiliation with a for-hire carrier applicant.[49]

In a series of decisions converting contract carriage authority into common carrier authority under Section 10925(e), the Commission found that, so long as the involved operations are representative of common carrier service, an applicant need not provide either shipper testimony or formal documentation of prior service under existing permits to warrant conversion.[50]

To encourage intermodal service arrangements and heightened competition between and among rail and motor carriers, the Commission eliminated the "special circumstances" doctrine. That doctrine required rail-affiliated motor carriers to restrict requests for additional authority to service which was auxiliary or incidental to rail movements, absent special circumstances. This change established parity between the licensing standards applicable to rail affiliates and motor applicants generally.[51]

The Commission concluded its investigation into reciprocity considerations raised by Canadian motor carrier licensing policies, and determined that the Canadian regulatory system does not discriminate against United States trucking, and that the comparatively more stringent entry requirements of the Canadian provinces do not cause significant harm to the trucking industry of this country.[52] Dismissal of this investigation, coupled with President Reagan's November 29, 1982, lifting of the licensing moratorium imposed on Canadian carriers by the Bus Regulatory Reform Act of 1982, permitted the Commission to issue operating authority to Canadian motor carriers. The Commission continued to observe procedures promulgated for the enforcement of the statutory licensing moratorium on Mexican domiciled, owned, or controlled motor carriers.[53]

Household Goods

During fiscal year 1983, the Commission made significant decisions regarding household goods transportation. In considering applications for common carrier authority to transport household goods, the Commission continued to recognize the difficulty of obtaining public support for such applications. Emphasizing that evidence of public support is not the sole means of supporting an application, the Commission granted authority to applicants which presented evidence of ex-

[48] No. MC-[illegible]244 (Sub-No. [illegible]) [illegible] (not printed), decided December [illegible], 198[illegible].

[49] No. MC-[illegible] [illegible] (not printed), decided May [illegible], 198[illegible].

[50] No. MC-[illegible] (Sub-No. [illegible]) [illegible] (not printed), decided May [illegible], 198[illegible].

[51] Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates, 13[illegible] M.C.C. [illegible]78 (198[illegible]), affirmed on appeal sub nom. American Trucking Associations, Inc. v. I.C.C., 722 F.2d 1243 (5th Cir. 1984).

[52] Investigation into Canadian Law and Policy Regarding Applications of American Motor Carriers for Canadian Operating Authority, 13[illegible] M.C.C. 870 (198[illegible]).

[53] Ex Parte No. 55 (Sub-No. 43D), Certification of Canadian or Mexican Ownership or Control of Applicants for Motor Common or Contract Carrier Authority, 47 Fed. Reg. 42948 (September 29, 1982).

isting inefficient or unprofitable operations, including evidence of service provided as agents for regulated household goods companies.[54] The Commission also indicated that companies proposing to transport "furniture and fixtures" in addition to household goods should be authorized to transport such commodities without having to present separate proof of need for such transportation. The Commission noted that the standard procedure under its restriction-removal rules is to broaden household goods authority to include "furniture and fixtures."[55]

As noted in the Commission's 1982 Annual Report, the Motor Carrier Act of 1980 eliminated the use of master certificates to support grants of operating authority after July 2, 1980, even in those instances in which applications for such authority had been processed and public-need determinations had been made before that date. The Commission's master licensing procedures for the transportation of government traffic thus became invalid, and 137 government traffic certificates became void. During fiscal year 1983, companies whose government traffic certificates had become void reapplied for authority to transport household goods and were granted such authority, based in part upon evidence of prior operations in the transportation of United States Government household goods traffic.[56]

In the area of contract carriage, a decision of the United States Court of Appeals for the Fifth Circuit marked the first affirmance on the merits of the Commission's post-Motor Carrier Act policy of granting contract authority for the transportation of household goods.[57] The Court affirmed the Commission's findings that certain specialized service guarantees can suffice to meet the "distinct needs" test of contract carriage.[58] The Commission has recognized that, whereas a household goods company might be unwilling or unable to make service guarantees to the general public, it might be able to make reasonable commitments to certain shippers, such as high-volume users of its service. Accordingly, contract carrier authority was granted to a number of household goods companies.[59] The Commission also emphasized that a household goods broker can be a contracting shipper able to support a contract carrier application.[60]

In another significant decision in the area of contract carriage, the Commission determined that an applicant may be granted authority to serve a class of

[54] No. MC-61832 (Sub-No. 6), *Pitzer Transfer & Storage Corp., Extension—Household Goods* (not printed), decided April 11, 1983; No. MC-154670 (Sub-No. 1), *Student Services Moving Co., Inc., Extension—Household Goods* (not printed), decided April 4, 1983; and No. MC-78926 (Sub-No. 5), *CTC Van Lines, Inc., Extension—Household Goods* (not printed), decided October 21, 1982.

[55] No. MC-118551 (Sub-No. 2), *Academy Van & Storage Company, Inc., Extension—Thirty-five States and DC* (not printed), decided May 19, 1983.

[56] No. MC-140586 (Sub-No. 4), *Golden North Van Lines, Inc., Extension—U.S. Households* (not printed), decided April 22, 1983, and No. MC-109331 (Sub-No. 8), *Nilson Van & Storage, Extension—Household Goods, 45 States* (not printed), decided March 4, 1983.

[57] *Global Van Lines, Inc. v. ICC*, 704 F. 2d 829 (5th Cir. 1983).

[58] 49 U.S.C. § 10102(13)(B)(ii).

[59] No. MC-15735 (Sub-No. 62), *Allied Van Lines, Inc., Extension—Banquet Foods Contract Service* (not printed), decided May 25, 1983, and No. MC-74681 (Sub-No. 18), *Stevens Van Lines, Inc., Extension—Household Goods Contract Service* (not printed), decided May 16, 1983.

[60] No. MC-41098 (Sub-No. 90), *Global Van Lines, Inc., Extension—Merrill Lynch Contract Service* (not printed), decided August 1, 1983.

shippers. A carrier proposing to serve certain commercial or national account firms was granted authority to serve "persons (except individuals) as defined at 1 U.S.C. § 1."[61] In granting such authority, the Commission stated that it was not authorizing indiscriminate service to any shipper of household goods meeting the definition but, rather, service for those shippers which would actually enter into contracts with an applicant.

Along with consideration of the propriety of issuing contract carrier authority to transport household goods, the Commission gave renewed consideration to protest-standing requirements following court remand of a decision in this area.[62] The Commission reiterated its determination that to meet pertinent statutory protest-standing requirements, a company must do more than show that it holds nationwide household goods authority, and that it is conducting extensive operations under such authority. Because the scope of a contract carrier application is restricted by a limitation of service to a named shipper, a protestant must show instead that it served the particular shipper during the previous 12-month period or, alternatively, that it conducted active, good-faith solicitation of that particular shipper's household goods traffic during the same period. The Commission emphasized that indirect forms of solicitation are not sufficient and that, if a competing company is to qualify as a contract application protestant, it must establish that it has solicited the traffic of the particular shipper supporting the application, and that its solicitation efforts have been direct—through personal contact by telephone or in person—and recurring.[63]

Significant decisions also were made int he area of pooling. First, the Commission found that pooling agreements between a carrier principal and exclusively non-carrier agents are not subject to the Commission's jurisdiction, since governing statutory provisions concern agreements only between regulated common carriers. Second, the Commission also found that mere affiliation of non-carrier agents with regulated carriers does not serve to make them carriers. Third, the Commission found that, since the relationships of carrier principals with non-carrier agents are outside the scope of its regulatory jurisdiction, the Commission is not the appropriate body to consider the competitive consequences of a policy followed by a household goods carrier principal, to the effect that it will deal only with agents which are non-carriers.[64]

In another significant decision in the area of pooling, Atlas Van Lines, Inc. was granted approval for a pooling agreement to pool military or government household goods traffic with carrier agents holding only so-called *King-pak*, pack-and-crate, and Ex Parte No. MC-107 (government traffic) authorities.[65] In reaching its conclusions in

[61] No. MC-1745 (Sub-No. 110), *Interstate Van Lines, Inc.—Extension—Household Goods* (not printed), decided by Appellate Division 1 on August 18, 1983, and by the entire Commission on September 9, 1983.

[62] *Aero Mayflower Transit Co. v. ICC*, 699 F.2d 938 (7th Cir. 1983).

[63] *Bekins Van Lines Co.—Contract Carrier Application*, 133 M.C.C. 128 (1983).

[64] *Atlas Van Lines, Inc.—Pooling*, 127 M.C.C. 799 (1983).

[65] No. MC-F-15004, *Atlas Van Lines, Inc., et al.—Pooling Application* (not printed), decided July 15, 1983.

that proceeding, the Commission cited statutory provisions promulgated in the Household Goods Transportation Act of 1980 which created a presumption that certain pooling agreements are in the interest of better public service and operational efficiency, and that they do not unduly restrain competition. The Commission found the presumption to be applicable and unrebutted. It additionally found that the agreement was assented to by all carriers involved, and that the provisions for consideration between the carriers, and the terms and conditions of the agreement, were just and reasonable.

In the area of rates, the Commission denied a petition of an association of household goods handlers requesting it to institute a declaratory-order proceeding for the purpose of establishing standards judging the lawfulness of discount rates, and procedures and evidentiary rules for assuring adherence to those standards.[66] In reaching its decision, the Commission reiterated its standing that adjudication of individual rates is the only satisfactory method of establishing a record for a finding of either predation or discrimination. The Commission additionally pointed out that, in the Declaration of Policy of the Household Goods Transportation Act of 1980, Congress had stated that "maximum flexibility on the part of the carriers in the pricing of their services best serves the shippers of household goods and allows a variety of quality and price options to meet market demands."[67]

Relative to reporting requirements, a Commission decision reduced the reporting burden for Classes I and II motor carriers of household goods by eliminating 14 schedules from the Annaul Report Form, M-H.[68] Overall, the Commission estimated that household goods carriers would save 4,000 hours previously devoted to the preparation of formerly required statistics. The Commission concluded that since it no longer used the information for regulatory purposes, it had the responsibility to relieve the carriers of the burden, despite the fact that outside parties found the data useful.

In a case before the United States Court of Appeals for the Second Circuit, the court affirmed the Commission's determination that trucking and household goods companies, like railroads, can limit their liability by publishing "released rate" provisions that include deductible clauses, although only the Staggers Rail Act of 1980 expressly provides for such clauses.[69] While avenues have been available for use in limiting loss and damage liability, the deductibles—disclaimers of liability for claims below a certain amount—have not been used in the past. Carriers traditionally desiring to limit their liability merely have established a low ceiling for it.

In another case, the 7th Circuit Court of Appeals upheld the Commission's interpretation that the Household Goods Transportation Act of 1980 did not vest the Commission with statutory authority to enforce its reweigh regulation against another federal agency, in this instance, the Department of Defense (DOD).[70] The court ruled that the

[66] No. 38785, *Movers' & Warehouseman's Association—Lawfulness of Discount Rates* (not printed), decided May 19, 1983.

[67] Pub. L. 96-454, 94 Stat. 2011, § 2.

[68] *Revision to the Annual Report of Motor Carriers of Household Goods, Form M-H*, 132 M.C.C. 974 (1982).

[69] *Shippers National Freight Claim Council, Inc. v. ICC*, Civil No. 80-4243 (2d Cir. June 13, 1983).

[70] *Allied Van Lines, Inc. et al. v. I.C.C. and U.S.*, 708 F.2d 197 (1983).

Commission's jurisdictional conclusion was amply supported by an examination of the Act, by its legislative history, and by the long-standing pattern of parallel regulation by the DOD and the ICC.

Consumer complaints during fiscal year 1983 in the regulatory areas under the Commission's jurisdiction reflected a 21-percent drop from the prior fiscal year. At the close of the fiscal year, the Commission was evaluating data obtained from two separate studies of the household goods industry. One study related to the industry's implementation of the Commission's household goods operational rules, and the other study related to the overall impact of the Household Goods Act of 1980 on the interstate moving industry and on shippers. The studies take into account reduced complaint levels, and whether these levels indicate shipper satisfaction with the services of the household goods industry.

The Independent Trucker

As in past years, the Commission continued its efforts to assure that independent truckers were afforded equal opportunities to compete within their vital area of the trucking industry. During fiscal year 1983, several activities encompassing formal rulemaking proceedings, educational projects, and enforcement actions were undertaken to benefit owner-operators.

At the close of the year, over 600 certificates had been issued to independent truckers under a special eased-entry category permitting owner-operator movement of food and other edible products in amounts not exceeding the annual tonnage of those transported goods exempt from interstate regulation. This particular type of authority is issued pursuant to Section 5 of the Motor Carrier Act of 1980 which, in addition to eliminating the public-need criterion, provided for the filing of a certification-of-compliance report one year after a grant of authority, and on the same filing date in successive years. In order to simplify further the compliance-report requirement, the Commission issued a notice of proposed rulemaking proposing that, irrespective of their certificate issuance dates, annual reports be submitted by all owner-operators by March 31 of each year.[71] In that same rulemaking, the Commission also proposed to eliminate the tonnage-reporting requirement from the annual report form.

Final rules revising leasing regulations were served in fiscal year 1983.[72] The purpose of the modification was to clarify and close loopholes contained in the ICC's lease and interchange of vehicles rules and, in particular, to require (1) specific performance of lease provisions by carriers, (2) specification that payment to owner-operators for trip leases be made by the permanent lease carrier; (3) limits to the paperwork carriers may require as a condition of payment to owner-operators, (4) carrier payment of fines for overweight and oversize trailers in certain instances, (5) carrier provision of prorated refunds for returned base plates, (6) carrier specification of the amount of charge-back items, together

[71] Ex Parte No. MC-143, *Owner Operator Food Transportation* (not printed), decided September 7, 1983.

[72] *Lease and Interchange of Vehicles*, 132 M.C.C. 916 (1982).

with a recitation of how the amount was computed; and, (7) the provision to independent truckers of copies of those documents necessary to determine the validity of charges. Although currently in effect, these regulations are the subject of pending judicial review.

In another proceeding the Commission dealt with the issue of household goods carriers' responsibility to owner-operators.[73] The Commission ruled that, effective December 31, 1982, an authorized carrier's obligation to ensure that an owner-operator receives all the rights, benefits, and protections of the leasing regulations cannot be avoided simply by a carrier's acting through an agent. Instead, the principal carrier would be responsible, regardless of whether it leases the equipment directly or indirectly through an intermediary third-party agent. Court action appealing this action is now pending.

The Commission commenced a rulemaking proceeding[74] proposing the elimination of an existing requirement that equipment be leased for a minimum duration of 30 days when operated by its owner, and elimination of a related recordkeeping requirement for the agricultural exemption. Owner-operators have complained of being "slow-loaded"; this practice delays the dispatch of leased equipment held under a 30-day lease for a longer period than it does the dispatch of owned equipment. Since owner-operators in almost all cases generate revenues only when loaded, the slow-loading practice can result in a potentially sizeable income loss. The ability to lease for less than 30 days would offer greater opportunities and incentives for individual industriousness in securing short-term traffic whenever a lessee is unable to provide a load in a timely manner. Public comments on this proposal were due in November 1983, and final rules were to be issued thereafter.

Final rules were also adopted permitting private carriers to trip-lease equipment and drivers to authorized carriers.[75] This ruling also eliminated the requirements that lessors (private or authorized carriers) regularly use the trip-leased equipment in their authorized service, and that the trip-leased equipment be used in the direction or point the lessor is authorized to serve. These rules have been stayed pending judicial review.

During fiscal year 1982, the ICC modified its rules covering compensation to owner-operators for increased fuel costs.[76] The revenue-based reimbursement program essentially was replaced with one requiring payments to independent truckers based on a cents-per-mile formula developed by the Commission. This decision was the subject of a petition for review filed in the United States Court of Appeals, Fifth Circuit. The court held that the Commission had exceeded its statutory authority in specifying the divisions of monies between regulated carriers and owner-operators, and vacated and remanded the decision. As a result of the court's action, the ICC is-

[73] *Lease and Interchange of Vehicles*, 132 M.C.C. 822 (1982).

[74] Ex Parte No. MC-43 (Sub-No. 15), *Elimination of Thirty Day Leasing Requirement* (not printed), decided August 18, 1983.

[75] *Leasing Rules Modifications*, 132 M.C.C. 927 (1982).

[76] Ex Parte No. 311 (Sub-No. 4), *Modification of the Fuel Surcharge Program*, 46 FR 50070, October 9, 1981.

sued a rule-related notice terminating the owner-operator fuel reimbursement program effective July 23, 1983. In that notice, the Commission stated that in the future the issue of fuel costs would be a matter of negotiation between owner-operators and carriers.

Independent truckers contacted the Commission seeking information covering a wide variety of transportation-related matters. Throughout the year, the ICC's Small Business Assistance Office and regional and field offices responded to thousands of inquiries from owner-operators. About 4,500 complaints were received from independent truckers, the majority of which were resolved to the complainant's satisfaction. Significantly, the number of owner-operator complaints received in fiscal year 1983 was approximately 2,500 less than the number received during the past year.

In addition to assisting independent truckers with informational needs and the resolution of individual problems, the ICC field staff, under its Outreach Program, continually worked with state governments and Canadian provinces, and was successful in establishing an active road-check program. Violations discovered during these road checks included improper leasing arrangements and underpayments. For example, as a result of an investigation following a road check, $34,000 in fuel reimbursement underpayments were recovered against one carrier alone. Further, the field staff conducted more than 110 compliance surveys and reported leasing violations, nonpayments, and underpayments due independent truckers. In this regard, the field staff collected over $200,000 from carriers on behalf of owner-operators.

Commission personnel also spoke before several groups of independent truckers, and answered questions and participated in owner-operator meetings. More than 20 seminars were conducted by ICC field staff to educate and assist independent truckers, and the Commission participated in the third series of an interagency owner-operator training project. In conjunction with the Small Business Administration and the Department of Transportation, the ICC held 16 two-day interagency owner-operator conferences across the country during fiscal year 1983. Independent truckers attending these conferences were provided with information on ICC rules, policies, and the business effect of economic regulations.

Ex Parte No. 311 (Sub-No. 4), Modification of the Motor Carrier Fuel Surcharge Program (not printed), decided June 27, 1983.

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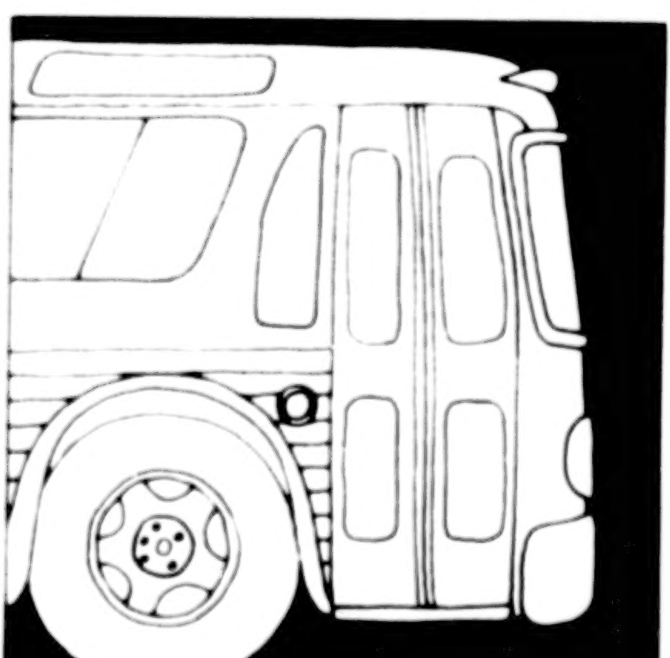

BUS COMPANIES

General Financial Condition

Class I intercity bus companies reported a drop in revenues and ridership during fiscal year 1983. With supplies of gasoline plentiful and available at decreasing prices, the bus industry lost patrons to its major competitive threat, the privately owned motor vehicle. Following the loss of ridership, intense fare competition among the largest companies further eroded bus industry revenues and income. Greyhound Lines and the Trailways System continued to dominate the industry, accounting for about 62 percent and 22 percent, respectively, of the industry's total operating revenues. Smaller regional companies shared the remainder of the market.

Commission data for the ten largest bus companies for the 12 months ending September 30, 1983, show that operating revenues decreased 5.1 percent to almost $1.1 billion as revenue passengers carried declined 7.9 percent. Net income decreased 17.6 percent to $22.2 million, and the rate of return on shareholders' equity fell to 4.64 percent from 5.62 percent. Revenues declined because of decreased ridership, and because of reduced fares designed to combat the loss of ridership.

Preliminary data for calendar year 1982 indicate that 40 Class I companies, which generated approximately 70 percent of the revenues reported by all 1,446 intercity bus companies, reported a 5.4-percent decrease in revenues compared to calendar year 1981. Revenues from intercity regular-route service and local service fell 6.1 percent and 20 percent, respectively, while special and package express service declined 3 percent and 3.4 percent, respectively. The total number of revenue passengers carried fell 10.2 percent, and net income fell 52.3 percent to about $29.5 million. The Class I bus industry's operating ratio, a measure of efficiency, unfavorably increased from 95.0 percent in 1981 to 98.0 percent in 1982.

On September 20, 1982, the Bus Regulatory Reform Act of 1982 (Bus Act) was enacted. Among other things, it authorizes passenger carriers to enter new markets and to drop service with relative ease in unprofitable areas, and it automatically removes various route restrictions. The Act permits the ICC to pre-empt state closed-door policies, intrastate rates that create a burden on interstate commerce, and state actions which prevent exit or reduction of intrastate service on interstate routes being discontinued. The legislation also permits bus companies to raise or lower fares within a zone of rate freedom (ZORF) without ICC approval. The Commission's investigation and suspension power is completely eliminated for zone-filed rates or fares, unless a rate is collectively set or predatory or discriminatory. The bill also contains limitations on antitrust immunity and directs the Ratemaking Study Commission to evaluate related issues.

Since this legislation was enacted, the larger bus companies have used the new freedoms to discontinue unprofitable routes and to increase fares. In many cases small regional companies have instituted service on the discontinued routes. However, since economic conditions have only recently begun to improve and since the legislation was only recently passed, it is premature at this time to assess the impact of these regulatory reforms on the industry's financial condition.

Rates

Implementing Section 17 of the Bus Act, the Commission issued final rules for the processing of petitions which seek review of state regulation of intrastate rates, rules, and practices of interstate bus carriers. Section 17 authorized the Commission to pre-empt state actions which impose an unreasonable burden on interstate commerce. In the first proceeding filed under these rules, the Commission concluded that the partial increases approved by the State of North Carolina resulted in rates that were "without justification, significantly lower than interstate fares for comparable service within the state." The Commission authorized the bus company to implement its proposed increases in full in order to remove unreasonable discrimination and the resulting burden on interstate commerce.

The Commission adopted final rules establishing procedures for motor carriers of passengers to file individual rate changes within the Bus Act's zone of rate freedom, which is similar to the ZORF for motor carriers of property adopted in the Motor Carrier Act (MCA). Bus companies may now raise or lower their rates or fares, with substantially reduced risk of investigation or suspension, within specified percentages that expand over a three-year period. During those three years, rates or fares filed within the zone may only be suspended or investigated on the grounds that they are predatory or discriminatory, and not on the basis of reasonableness. Nevertheless, the Bus Act continues to permit the filing of complaints challenging the reasonableness of an effective rate or fare established through use of the zone mechanism. Final rules established expedited procedures for the filing and handling of such complaints within 90 days of their receipt.

The Commission also adopted final standards to implement Section 10 of the Bus Act, which sets new criteria for the operation of bus industry rate bureaus. In general, it applies the MCA guidelines to the passenger bus industry that formerly applied only to motor carriers of property. Section 10 also adds three new provisions, applicable solely to passenger motor carriers, which define the scope of antitrust immunity.

As required by the Bus Act, the National Bus Traffic Association (NBTA), currently the only bus industry rate bureau, filed an amended rate agreement with the Commission. Although public comment on that proposed agreement is not required in the Bus Act or in the final standards implementing Section 10, NBTA's unique position as the only industry rate bureau justified public comment. NBTA may reply to all comments filed. An expeditious review of, and decision upon, its agreement is expected.

The Commission also announced that petitions filed by passenger and water contract carriers which seek relief from the tariff-filing requirements

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will continue to be considered on an individual basis.[6]

Operating Rights

Entry—To implement the Bus Act, the Commission adopted new procedural rules to govern the filing and processing of applications for operating authority by bus companies.[7] These rules became effective on November 19, 1982, the effective date of the new law, and included amendments to the application form corresponding to "fitness only" applications and to the Commission's new power to grant intrastate regular-route authority to bus companies. Other rule changes reflect the new law's presumption of public demand or need for proposed passenger service, so that no public support need be presented in a passenger application.

The changes in the substantive standards applicable to passenger applications were highlighted in a case which had been remanded to the Commission by a Federal court shortly before the enactment of the new law.[8] The Commission applied the new law which required a grant of authority if an applicant was found to be fit, and if the applicant proposed no regular-route services and was not a recipient of any governmental financial assistance. The new law defines "fitness" to mean safety fitness and insurance coverage only. Allegations of unauthorized operations are no longer relevant to the fitness inquiry; increased civil penalties provide the proper remedy for unauthorized operations.

Exit—The Bus Act gave the Commission new pre-emptive jurisdiction to permit passenger carriers to discontinue intrastate services provided over authorized interstate routes. The state regulatory body has the first opportunity to consider a proposed discontinuance of such intrastate service, but if it denies a request, or fails to act in the matter within 120 days, the company may petition the Commission for a pre-emptive ruling. Procedural rules governing the processing of these exit petitions were adopted concurrently with the effective date of the new law.[9]

Three of the decisions relating to particular exit petitions are of some note. The first decision determined when the 120 days allotted for state action begins. The Commission decided that a company must make a complete filing, according to the requirements of state law, before the time limit on the state's action becomes effective. In this case, a company was found to have filed its pre-emptive petition prematurely, and the Commission dismissed its petition.[10]

Two other decisions reached different results. One petition was approved because the discontinuance was not shown to be inconsistent with the public interest, and the required continuation of services appeared to constitute an unreasonable burden on interstate

[6] Ex Parte No. MC-165, *Exemption of Motor Contract Carriers From Tariff Filing Requirements* (not printed), decided October 5, 1983.

[7] *Application—Operating Authority—Motor Pas. Car.*, 133 M.C.C. 62 (1982).

[8] No. MC-155412 F, *Quality Coach Lines, Common Carrier Application* (not printed), decided January 25, 1983.

[9] *Preemption of State Regulation—Regular Route Exit*, 133 M.C.C. 201 (1982).

[10] No. MC-1515 (Sub-No. 331), *Petition of Greyhound Lines, Inc. for Review of a Decision of the Georgia Public Service Commission Pursuant to 49 U.S.C. 10935* (not printed), decided July 22, 1983.

commerce." Another petition to discontinue service was denied because the applicant failed to carry its burden of proving the revenues from, and the costs of, providing service over the route proposed to be abandoned.

Interpretation of Operating Authority—A complaint proceeding raised the question of whether a company's operations to and from Atlantic City, N.J., were being conducted properly under its authority to conduct special operations over irregular routes. The Commission determined that such services, notwithstanding their frequency, were within the commonly accepted scope of special operations, and that the requirements of "sightseeing and pleasure tour" services were not applicable when such a limitation had not been placed in the operating authority. In addition, the company's operations were found to be proper irregular-route services, because they did not exhibit the usual characteristics of "ordinary" regular-route passenger service.

Service

Fiscal year 1983 was a period of adjustment to the regulatory changes which followed enactment of the Bus Act in 1980. Regular-route service was being expanded by existing companies through the acquisition of additional geographic coverage, by restriction removals, and by new entrants. New charter and special transportation companies, many offering authorized service between all points in the United States, created a significant increase in the availability of this type of bus service.

The number of complaints against interstate bus service fell since the adoption of the Bus Act. Prior to the legislation, the Commission received approximately 25 complaints each month; that figure was reduced to approximately 16 complaints per month during fiscal year 1983.

There was also a change in the distribution of complaints. Prior to the passage of the Act, the most frequently received complaint related to the quality of service, followed by reduction-in-service complaints and complaints concerning the application of fares. The greatest number of complaints in fiscal year 1983 involved service reductions, followed by quality-of-service complaints and matters involving fares.

Seminars

Beginning in May 1983, the Commission presented a series of passenger bus seminars to acquaint bus operators, state and local governments, and interested individuals with changes in the law and Commission regulations. These seminars, which were conducted in 11 cities across the country, covered an overview of the Bus Act, entry and licensing procedures, and intrastate rate and exit cases. Finally, in order to assist new and small passenger operators, the Small Business Assistance Office prepared a publication entitled *Guide to Applying for Permanent Authority: Passengers*, and a handout summarizing various provisions of the Bus Act.

No. MC-1515 (Sub-No. 332), *Petition of Greyhound Lines, Inc., for Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. 10935* (not printed), decided August 23, 1983.

No. MC-59238 (Sub-No. 74), *Petition of Virginia Stage Lines, Inc., for Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. 10935* (not printed), decided September 9, 1983.

Capitol Bus Co. v. Catawese Coach Lines, Inc., 133 M.C.C. 170 (1983).

FREIGHT FORWARDERS

Relative to freight forwarder rate filings, the Commission proposed to reduce the notice period from the current 30 days to one day for new and reduced rates, and to five days for increased rates.[1] Additionally, the ICC proposed to expand the present zone of ratemaking flexibility (ZORF) from 10 to 15 percent.[2] Streamlined tariff-filing requirements for rates and charges filed under the ZORF are also proposed.

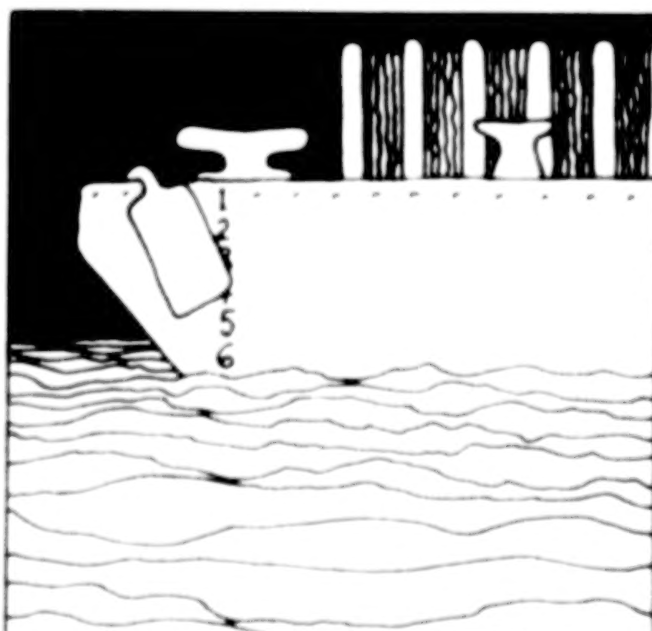
The Commission rulemaking which allowed freight forwarders to take advantage of restriction-removal procedures was reversed by the United States Court of Appeals for the Fifth Circuit.[3] The Court concluded that the Commission lacked the power to promulgate those rules.[4]

[1] Ex Parte No. MC-170, *Short Notice Effectiveness for Motor Carrier and Freight Forwarder Rates* (not printed), decided July 12, 1983.

[2] Ex Parte No. MC-169, *Expansion of Zone of Reasonableness for Motor Common Carriers of Property and Freight Forwarders* (not printed), decided April 29, 1983.

[3] *Freight Forwarder Restrictions*, 132 M.C.C. 832 (1982).

[4] *Global Van Lines, Inc. v. Interstate Commerce Commission*, No. 82-4284 (5th Cir. September 19, 1983).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WATER CARRIERS

The Commission announced in fiscal year 1983 that it would continue to process petitions filed by those water contract carriers seeking relief from tariff-filing requirements on an individual basis.[1]

The Commission also encouraged increased competition in the water carrier industry during the past fiscal year, and determined that grants of authority should not be excessively narrow in scope.[2] It also concluded that evidence of an applicant's poor financial condition did not warrant a denial of an application, and observed that the marketplace is the proper determinant of an applicant's financial ability. The Commission also noted that a grant of authority would enable an applicant to operate more efficiently, and could ultimately aid a carrier's financial situation.[3]

[1] Ex Parte No. MC-165, *Exemption of Motor Contract Carriers from Tariff Filing Requirements* (not printed), decided October 5, 1983.

[2] W-1346, *Hyannis Harbor Tours, Inc., Common Carrier Application* (not printed), decided November [illegible], 1982.

[3] W-[illegible], *The Westport Line, Inc., Common Carrier Application* (not printed), decided April 4, 1983.

INTERMODAL TRANSPORTATION

The Commission continued to promote the growth of intermodal transportation services by eliminating the so-called "special circumstances" doctrine which, since 1936, had required that motor operating authority issued to railroads or their affiliates be restricted to operations incidental to rail services, unless special circumstances were present. Rail applications for motor authority may now be obtained under the general licensing requirements of Section 10922 and 10923 of the Motor Carrier Act of 1980.[1]

In a related proceeding, the Commission also proposed to eliminate the "special circumstances" doctrine for acquisition that involve motor carrier service beyond supplemental or auxiliary service.[2] The proposal would replace the Commission's presumptive policy against rail acquisitions of trucking companies with a balanced case-by-case approach.

The Commission reasoned that these presumptive barriers to rail expansion into trucking operations are contrary to the pro-competitive policies of the Motor Carrier Act and the Staggers Act, and that their continuation would damage enthusiasm for intermodal operations and ownership. The Commission's more flexible intermodal ownership policies would make railroad motor operations more available by freeing operating authorities from unnecessary restrictions.

Another proceeding involving intermodal ownership will begin in fiscal year 1984. CSX Corporation (CSX), the parent holding company of the Chessie System and the Seaboard railroads, acquired control of Texas Gas Transmission, of which American Commercial Barge Lines Company (ACBL), a domestic water carrier, is a wholly owned subsidiary. The Commission permitted the acquisition to occur subject to putting the ACBL stock in a blind trust until the Commission can rule on its legality and whether the acquisition will substantially lessen competition. CSX's application for control of ACBL was filed with the Commission on November 4, 1983.[3]

The Commission is currently conducting a monitoring study of trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service to compare traffic trends and service quality in the period immediately before the present time. It is anticipated that the study will be completed near the end of fiscal year 1984.

Another proceeding involving an expansion of the TOFC/COFC intermodal exemption was proposed in February 1981. In Ex Parte No. 230 (Sub-No. 6), *Improvement of TOFC/COFC Regulation*, the Commission proposed to exempt highway TOFC/COFC service performed by railroad-affiliated and other motor carriers as part of continuous intermodal movements. The Commission hopes to render a decision in this proceeding in early 1984.

[1] M[illegible] Operating Authority [illegible] M[illegible] affirmed [illegible] American Trucking A[illegible] 1984).

[2] Ex Parte No. [illegible] Acquisition of Motor [illegible] by Railroad [illegible] decided August [illegible].

[3] Finance Docket No. 30300, CSX Corporation—Control—American Commercial Lines, Inc.

TARIFFS

The number of tariff filings continued its steep upward trend during fiscal year 1983, as new entrants into the industry, the state of the economy, and innovative ratemaking by motor carriers contributed to the continued growth in tariff filings. Over 1.2 million documents were received during fiscal 1983, an increase of 30 percent over the prior fiscal year's total, which itself was 28 percent higher than that of fiscal year 1981.

Concurrent with the trend was the continued rapid pace of the activities of the Special Permission Board. New rate proposals frequently required relief from the Commission's tariff-publishing regulations, and such matters were handled by the Board. The Board issued special tariff authorities which assured ease of understanding and interpretation by tariff users through the use of clear and concise tariff provisions.

Of special interest to motor common carriers was the ability to meet the reduced rates of competitors, and two special tariff authorities proved to be particularly helpful to them. One authority permitted motor freight companies to meet competitive rates on five days' notice, instead of the statutorily required notice period of 30 days.[1] The other allowed passenger bus operators to make fare changes on one day's notice to match the immediate fare adjustments made by competitive, unregulated modes, such as automobiles, airlines, and passenger railroads.[2]

Many freight forwarders use railroad trailer-on-flatcar (TOFC) service, and many were faced with a problem when the railroads' TOFC services were exempted from regulation. The problem arose from the decisions and practices of railroads to increase charges on a day's notice, while the forwarders were statutorily required to provide a full 30 days' notice. To alleviate the situation, the Commission granted freight forwarders permission to publish rate changes on a single day's notice.[3]

The transportation of hazardous materials has become a matter of concern to carriers due to the costs of providing protective services. Tariff-publishing regulations require that specific rates for services rendered be stipulated in tariffs. Because the cleanup costs of hazardous-material spills cannot be predetermined, carriers sought permission to publish provisions that would assess actual charges incurred in spillage or leakage incidents when the carrier was not at fault. The Commission's interest in providing environmental protection was the basic reason why it permitted such provisions to be published.[4]

Tariffs using postal ZIP Codes in place of named origins and destinations were authorized during fiscal year 1983.[5] To expand on this process of automatic rate retrieval, a large motor common carrier was granted permission to refer to a new, national, three-digit ZIP Code mileage guide which facilitates the process of rate determination through the use of computers.[6]

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[1] Special Tariff Authority No. 83-[illegible], *Short Notice to Meet Competition.*

[2] Special Tariff Authority No. 83-[illegible]94, *Advance in Reduced Passenger Fares on Short Notice.*

[3] Special Tariff Authority No. 83-[illegible], *Increases on [illegible] Notice.*

[4] Special Tariff Authority No. 83-[illegible], *Charges for Transportation of Hazardous Materials and Clean-up of Spills.*

[5] Special Tariff Authority No. 83-[illegible], *U.S. Postal Service ZIP Guide.*

[6] Special Tariff Authority No. 83-[illegible], *Method of Determining Rates and Charges.*

Recognizing the possibilities of computer technology developments, the Commission issued an advance notice of proposed rulemaking which invited comments from interested parties on the feasibility of permitting tariff filings by means of electronic processes.[7] Comments were received regarding the ICC's proposal, and they are currently being evaluated.

To encourage carrier price innovation and tariff simplification, a proposal to revise and consolidate the present tariff regulations was advanced for public comment.[8] The rules were designed to give carriers increased flexibility in pricing services, and to simplify the wording of current rules. Final rules are expected to be issued early in 1984.

Informal Rate Cases

The Bureau of Traffic's Section of Rates and Informal Cases used its informal procedures to settle 6,175 cases concerning disputes over rate and tariff matters during the past fiscal year. This simple and inexpensive process prevented most disputes from appearing on the Commission's formal docket, which comparatively is a time-consuming, complicated, and more expensive method of dispute settlements.

The Commission's special-docket procedure permits rail and water carriers to seek authority for the refund or waiver of collection of charges determined to be unreasonable. A total of 773 special-docket applications involving total reparations and waivers of $21,604,896.36 were authorized during fiscal year 1983. The largest single adjustment was a refund of $3,677,446.79 on 40,590 carload shipments of coal in a dispute arising over the refund provisions of a transit tariff, and a contract executed between the parties providing transportation of the coal movements at issue.[9]

Through the informal-complaint docket, rail or water shippers may prevent the expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaint. If the carrier in question agrees that a particular movement involves overcharges, or that charges are unreasonable, refunds or waivers may then be made without formal procedures. The Section of Rates and Informal Cases processed 105 applications on the informal complaint docket during the fiscal year.

Motor common carriers acting with one or more other carriers, household goods carriers, and/or freight forwarders are required to seek authority from the Commission prior to the publication of any "released rates" based upon a limitation of a carrier's liability for a shipper's property. During the past fiscal year, the Commission's Released Rates Board acted on four applications for such authority.

Suspension Board

New, increased, or reduced rates and charges for interstate service provided by the nation's rail, motor, freight forwarder, and domestic water carrier industries are filed with the

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[7] Ex Parte No. 444, *Electronic Filing of Tariffs*, Advanced Notice of Proposed Rulemaking, 48 Fed. Reg. 9702, March 8, 1983.

[8] No. 37421, *Revision of Tariff Regulations, All Carriers*, Notice of Proposed Rulemaking, 48 Fed. Reg. 31265, July 7, 1983.

[9] Special Docket Application No. 11455-83, decided April 4, 1983.

Commission in tariff form, generally on not less than 30 days' notice to the Commission and the public.[10] Upon the request of interested parties opposing tariff changes, the proposals are considered for possible investigation and suspension by the Commission's Suspension Board, or by the entire Commission. Decisions of the Board are subject to reconsideration by a division of the Commission.

During fiscal year 1983, a total of 181 rate proposals filed with the Commission were protested. Of these proposals, 11 were suspended, 120 were permitted to become effective, two were allowed to go into effect but were investigated, and 48 were either cancelled by the proposing company, had their protests withdrawn, or were rejected by the Commission.

There were seven unprotested rate proposals considered by the Board on its own initiative. All were permitted to become effective.

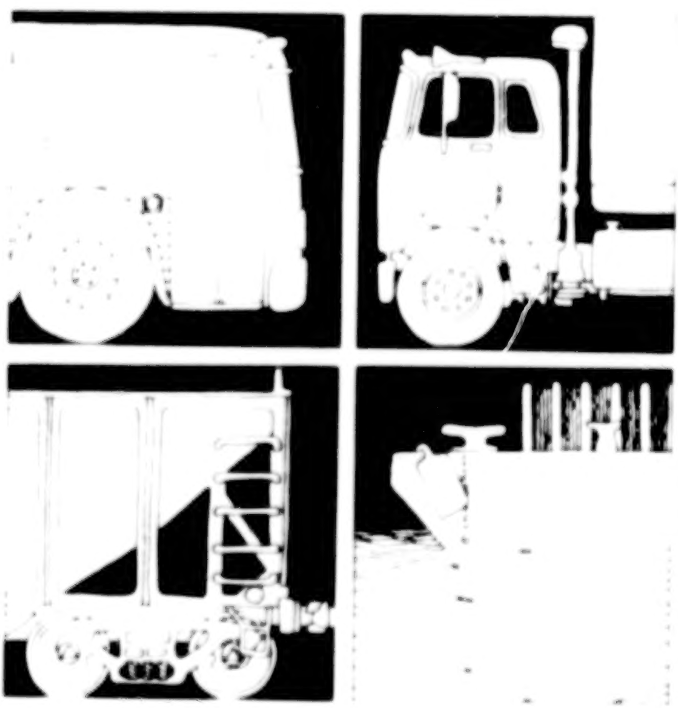
Among the proposals considered were 28 general increases in trucking rates and charges filed by regional motor bureaus,[11] two general increases filed by household goods carriers, and one increase filed by the National Bus Traffic Association.

Under the provisions of 49 U.S.C. 10726, the Board also considered 12 applications for authority to depart from those rules which prohibit rail and water companies from charging more for transportation for a short distance than for a longer distance over the same route, and under the same transportation conditions. All rail rates and charges were exempted from the need for prior Commission approval whenever departures are made from the restrictions of 49 U.S.C. 10726.[12]

[10] The Staggers Rail Act of 1980 (P.L. 96-448) amended 49 U.S.C. 10762(c)(3) to permit rail carriers to file new or increased rates on not less than 20 days' notice, and rate reductions on not less than 10 days' notice.

[11] Central & Southern, Central States, Eastern Central, Middle Atlantic, Middlewest, New England, Pacific Inland, Rocky Mountain, Southern Motor, and Niagara Frontier.

[12] *Rail General Exemption Authority — Long and Short Haul Transportation*, 367 ICC 234 (1983).



74

ENFORCEMENT

Throughout fiscal year 1983, the Commission's enforcement effort focused on illegal activities occurring within the surface transportation industry which were injurious to the shipping public or disruptive to the industry as a whole. The failure of some rail and motor companies to maintain rate integrity resulted in a number of enforcement actions, and penalties were assessed against companies and shippers for kickbacks, illegal rebates, concessions, and departures from tariff requirements. Numerous enforcement actions, injunctions, and civil forfeiture penalties also were taken against entities which engaged in for-hire interstate transportation without appropriate operating authority, or which unlawfully transported property and passengers or arranged transportation by unlicensed property brokers.

The following provides highlights of the ICC's enforcement efforts during the past fiscal year.

Fraudulent Conduct

On March 28, 1983, two individuals pled guilty to one count each of making a false statement to a Commission investigator during an investigation of alleged extortion and kickback in the motor carrier industry.[1] In the same case, one individual pled nolo contendere to one count of violation of 18 U.S.C. §1001, and was placed on probation for one year.[2]

Fitness

A carrier applicant was found unfit on March 16, 1983. Unauthorized transportation, use of a dual-rate system, and checking account irregularities were the basis of the unfitness finding.[3]

Consumer Protection

In the continuing effort to provide protection for the consumer, the Commission took action against several companies for violations of various consumer-related regulations. Household goods, loss and damage claim processing, and duplicate-payment violations were some of the areas in which enforcement actions are taken.

A permanent civil injunction was obtained against Paramount Moving and Storage Co., Inc., prohibiting violations of the Commission's household goods regulations relative to the payment of charges and the carrier's release of goods to the shipper.[4]

A permanent injunction was obtained against Bowling Green Express, Inc., requiring that carrier to handle loss and damage claims in a timely manner.[5]

Pacific Intermountain Express Co. entered into a settlement agreement with the Commission to pay civil forfeiture penalties of $110,000 for alleged violations of duplicate-payment regulations. That carrier also agreed to make refunds of duplicate payments for a

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[1] U.S. v. Richard [illegible], Criminal No. 83-[illegible] (M.D. PA, March 28, 1983); U.S. v. Paul [illegible], Criminal No. 83-0021-[illegible] (M.D. PA, March 28, 1983).

[2] U.S. v. William S. Gilchrist, Jr., Criminal No. 83-0021-02 (M.D. PA, April 8, 1983).

[3] No. MC-161496, *Baltimore International Transportation, Inc., Contract Carrier Application* (not printed), decided March 16, 1983.

[4] ICC v. *Paramount Moving and Storage Co., Inc.*, Civil No. CA-82-4094 (E.D. NY, August 9, 1983).

[5] ICC v. *Bowling Green Express, Inc.*, Civil No. CA-C-82-0084 BG(S) (W.D. KY, October 13, 1983).

two-year period in an amount in excess of $1 million.[6]

A permanent injunction was obtained against Aero Mayflower Transit Co., Inc., and Maffuci Storage Corp., enjoining both firms from the assessment of storage charges on interstate shipments when storage was not specifically authorized by the shipper.[7]

Concessions

On February 10, 1983, Crown Zellerbach Co., San Francisco, Calif., paid $150,000 in settlement of a civil forfeiture claim for its receipt of rebates and concessions in connection with shipments in interstate commerce in violation of the Elkins Act. One railroad also paid a fine in the amount of $75,000 for a concession violation of the Elkins Act.[8]

Directed Service

Through administrative procedures and the results of more than 150 lawsuits in Federal courts, the Commission obtained restitution in amounts exceeding $2.2 million. This money was owed to the Kansas City Terminal Railway Company (KCT) by shippers and other railroads as a result of directed-service operations by the carrier. The collection of these delinquent funds served to reduce the deficit which KCT had incurred, and for which the Federal government was liable, as a result of a Commission order requiring it to assume the operation of another railroad when the other railroad had ceased operations.

Owner-Operators

The Commission also took enforcement actions to protect the rights of owner-operators. Injunctive action, civil forfeiture penalties, and restitution to owner-operators were remedies frequently employed by the Commission's staff to correct abuses uncovered in this vital area of the trucking industry.

A civil action brought in Federal Court resulted in a $7,500 collection, from a former stockholder of Flash Transportation and Leasing Company, of money to be distributed to former owner-operators.[9]

Norman Lines, Inc., paid $5,000 in civil forfeiture penalties for violations of the Commission's truth-in-leasing regulations.[10]

Maffei Produce, Inc., was permanently enjoined from violating the ICC's lumper statute. Maffei allegedly required produce haulers to hire lumpers to unload vehicles without compensating the truckers for such service. Maffei also paid a civil penalty for $1,000 for the alleged violations.[11]

Dominic V. Gandolfo, Inc., of Chelsea, Massachusetts, was permanently enjoined from requiring any person making delivery to a produce wholesaler to be assisted in unloading unless Gandolfo compensated that person for all such costs. The order also enjoined Gandolfo from coercing or attempting to coerce any person providing transportation to employ or pay someone to unload.[12]

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[6] No. MC-730, *Pacific Intermountain Express Co.* (July 15, 1983).

[7] *I.C.C. v. Aero Mayflower Transit Co., Inc., et al.*, Civil No. CA-82-2442 (E.D. NY, December 20, 1982).

[8] *U.S. v. Burlington Northern, Inc.*, Criminal No. CR-81-43-H (D. MT, May 10, 1983).

[9] *I.C.C. v. Flash Transportation and Leasing Company and Sam J. Vecchio*, Civil No. CA-82-0441 (D. D.C., July 11, 1983).

[10] No. MC-123269, *Norman Lines, Inc.* (October 5, 1982).

[11] *I.C.C. v. Maffei Produce, Inc.*, Civil No. C-83-0762-AJZ (N.D. CA, August 16, 1983).

[12] *I.C.C. v. Dominic V. Gandolfo, Inc.*, Civil No. CA-83-0528-N (D. MA, August 24, 1983).

Tennessee Steel Haulers, Inc., was ordered by a Federal Court to make restitution to owner-operators, and to pay owner-operators in a timely manner in the future.[13]

Injunctions and Contempt Actions

Numerous injunctions were obtained by the Commission in Federal courts for various violations, and many were directed to unauthorized transportation. Shipmate, Inc., of Bellville, Ohio, was permanently enjoined from engaging in the business of the brokerage of property transportation by motor vehicle unless that business was conducted under a license issued by the Commission.[14]

A permanent injunction was entered against Tarbox Trucking, Inc., forbidding it from providing motor transportation subject to regulation unless it was performed according to operating authority issued by the Commission. The injunction also required adequate insurance coverage for the protection of the public.[15]

Kenneth G. Bevry was convicted of three counts of criminal contempt for violation of a 1976 injunction against a company of which Bevry was president. The injunction prohibited unauthorized brokerage of property transportation, and Bevry was sentenced to 30 days imprisonment and a $5,000 fine.[16]

Interstate Commerce Cooperative, an entity operating as an exempt agricultural cooperative, was the subject of an order finding it in civil contempt of a previously entered injunction prohibiting unauthorized transportation. A. G. Hollenstein, a company official, was found in contempt of a court order, and was prohibited from having any association with an agricultural cooperative engaging in any transportation service for a period of five years.[17]

Insurance

One goal of the Commission's enforcement effort was to ensure protection for the public in the area of insurance. Accordingly, the detection and prosecution of transportation companies not having adequate insurance was a matter of high priority. To ensure compliance with the law, injunctions, temporary restraining orders, and other types of enforcement actions were taken against trucking companies which failed to acquire and/or maintain appropriate insurance coverage.

For example, permanent injunctions were entered against Haywood Transit, Inc., prohibiting it from engaging in interstate transportation of passengers without appropriate insurance in effect and on file with the Commission.[18]

A permanent injunction also was obtained against B-Best Trucking, Inc., prohibiting it from engaging in the interstate transportation of property without adequate insurance.[19]

[13] *I.C.C. v. Tennessee Steel Haulers, Inc.*, Civil No. 3-83-0539 (M.D. TN, August 22, 1983).

[14] *I.C.C. v. Shipmate, Inc.*, Civil No. C-83-763A (N.D. OH, June 9, 1983).

[15] *I.C.C. v. Tarbox Trucking, Inc.*, Civil No. CA-83-0869 (M.D. PA, June 30, 1983).

[16] *U.S. v. Kenneth G. Bevry*, Criminal No. 76-C-125 (E.D. WI, December 23, 1982).

[17] *I.C.C. v. Interstate Carrier Cooperative*, Civil No. CA-4-75-253 (N.D. TX, December 10, 1983).

[18] *I.C.C. v. Haywood Transit, Inc.*, Civil No. A-C-82-430 (W.D. NC, December 22, 1982).

[19] *I.C.C. v. B-Best Trucking, Inc.*, Civil No. C-2-83-0797 (S.D. OH, May 3, 1983).

COURT ACTIONS

The Commission's interpretation of the provisions of the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980 were again the subject of much court action during the past fiscal year. The Commission's most significant decisions chosen for review by courts of appeals were largely upheld; together with the ICC's other recent decisions, they will have significant impact not only on trucking and railroad industries, but also on the public that they serve.

The ICC's Office of the General Counsel handled 747 cases in Federal courts in fiscal year 1983. Of these, 564 cases were pending at the beginning of the fiscal year, and 183 additional cases were instituted during the year. As of September 30, 1983, the courts had concluded 290 cases, while 457 remained at various stages of litigation. Of the completed cases, 20 were concluded by the Supreme Court, 249 by Federal courts of appeals, and 21 by Federal district courts.

On December 13, 1983, the Supreme Court rendered an important decision which reaffirmed the principle that only the Interstate Commerce Commission—not the courts—has the authority to establish rail rates. The Court's decision arose from a prior court of appeals decision in the now famous litigation over the San Antonio coal rates. After the United States Court of Appeals for the District of Columbia Circuit remanded a Commission rate decision, a dispute arose over the effective rate level pending the Commission's final decision on remand. In a clarification of its original decision, the Court of Appeals held that the effect of its decision was to reinstate an earlier ICC prescription.

Supported by the Commission, the railroads petitioned the Supreme Court for a writ of certiorari. The Supreme Court held that, by effectively establishing a rate level, the Court of Appeals had encroached on an area which Congress had committed to the jurisdiction of the Commission, and not to the courts. In upholding the Commission's decision, the Supreme Court rejected San Antonio's "revival" theory (as adopted by the Court of Appeals) which provided for the revival of a Commission rate order whenever subsequent orders were set aside on judicial review.

Another important decision, rendered by the United States Court of Appeals for the District of Columbia Circuit, involved the Panama Canal Act. In a substantial victory for the Commission, the Court affirmed an earlier ICC decision which stated that the Panama Canal Act (legislation prohibiting railroads from owning competing barge lines without ICC approval) does permit the acquisition of water carrier stock by a rail company, on the condition that the rail company places the stock into an ICC-approved independent voting trust for the minimum period needed to secure a full hearing on whether the Act permits the actual stock ownership.

In this case, the CSX Corporation had agreed to acquire, by tender offer, Texas Gas Corporation which, in turn, owns American Commercial Barge Lines (which operates a barge line)

The Water Transport Association had argued that a voting trust arrangement violated Section 11321(a)(1) of the Panama Canal Act which makes it unlawful for a railroad to "own, operate, control, or have an interest" in a competing carrier unless the transaction has been approved by the ICC following a full hearing. In this instance, no hearing had been held before the water-carrier stock was acquired and placed in trust.

The Court of Appeals' rationale for upholding the ICC's decision was based on its refusal to read literally the language of the Panama Canal Act. The Court accordingly found that while the Act does require advance approval of acquisitions, some "interests" may exist while approval is being sought.

The Commission also won two important cases in the railroad merger area. The United States Court of Appeals for the District of Columbia Circuit essentially affirmed the Commission's decision authorizing Guilford Transportation Industries, Inc. (Guilford), to acquire control of the bankrupt Boston and Maine Corporation (B&M), a railroad operating in five northeastern states. (Guilford was required to obtain Commission approval because it already controlled another rail carrier, the Maine Central Railroad.) The Court remanded the case to the ICC for reconsideration of whether protective conditions for the benefit of Lamoille Valley Railroad Company and the Canadian National Railway Company were needed to preserve competition or adequate transportation.

The Court, however, rejected numerous other contentions raised by the several petitioners challenging the Commission's unconditional authorization, including those challenges to the validity of the ICC's essential services test, and to its finding that the B&M railroad would be financially viable following consolidation.

In a second, companion proceeding, the District of Columbia Circuit also affirmed most of the Commission's decision authorizing Guilford Transportation Industries, Inc., to acquire control of the Delaware and Hudson Railway Company, but remanded the case to the ICC for reconsideration of whether protective conditions involving two points of interchange in Maine between the new system and the Canadian National Railway Company were needed to preserve competition or adequate transportation. The Court specifically affirmed the Commission's determination that the consolidation would neither substantially reduce competition in the north-south rail service market, nor affect "essential services."

During fiscal year 1983, several courts reviewed ICC decisions which interpreted provisions of the Staggers Rail Act. In an important victory for the Commission, the United States Court of Appeals for the Fifth Circuit, sitting *en banc*, upheld the Commission's market-dominance regulations.

A divided panel of the Fifth Circuit originally had held the Commission's new market-dominance regulations unlawful to the extent that they permit the consideration of geographic competition (transportation of the same product from different sources) and product competition (transportation of

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substitute products) in the making of a threshold jurisdictional finding that a rail company has market dominance. The Court found that neither form of indirect competition was embraced within the statutory definition of "market dominance."

In March 1983, however, the Court of Appeals granted the Commission's and several railroads' petitions for rehearing *en banc*, and it vacated its earlier decision. The Court ultimately upheld the ICC's market-dominance regulations on the grounds that the Commission has statutory authority to consider the effects of indirect competition on rail rates in its determinations of the existence of market dominance.

The Commission's decision to apply its new market-dominance regulations in railroad rate-complaint cases filed under Section 229 of the Staggers Act was also upheld by the United States Court of Appeals for the Fifth Circuit.* Various shippers who had filed rate challenges under Section 229—essentially as a last effort to challenge rate levels in effect on the effective date of Staggers Act implementation—had argued that the ICC was required to apply its former market-dominance regulations, which precluded consideration of geographic and product competition, in the decision of rate-complaint cases.

The Court found nothing in the Staggers Act, its legislative history, or case law which revealed a Congressional intent to have the Commission apply its original market-dominance standards in Section 229 cases. Thus, without actually deciding the validity of the new regulations, the Court upheld the propriety of the application of the new regulations in the making of jurisdictional determinations in rate-complaint cases.

The Staggers Act and its legislative history emphasize the railroads' need for adequate revenue in order to meet the demands of interstate commerce; therefore, in accordance with the revenue-adequacy provisions of Section 205 of the Act, and in rules upheld by the United States Court of Appeals for the Third Circuit,* the Commission determined that a railroad would be considered revenue adequate if it has a rate of return equal to the current cost of capital.

Several shippers, however, primarily challenged the Commission's adoption of a single revenue-adequacy standard. They argued that Section 205 should be interpreted as requiring separate standards addressed to financial ratios, the flow of funds analysis, and productivity. They also challenged the components of the standard, and the definition of the investment base to which it applies.

Relative to the single standard per se, the Court agreed with the Commission that the ICC's standard encompasses all of Section 205's objectives, and complies with the Staggers Act intent to create a regulatory environment more favorable to investment in railroads. Concerning the standard's components, the Court found that the ICC's use of current debt (as opposed to embedded debt) was consistent with the Federal scheme of lessened regulation embodied in the Railroad

Western Coal Traffic League et al. v. ICC, 694 F.2d 378 (5th Cir. 1982), vacated upon grant of reh. en banc, unpublished order of March 7, 1983 (argued on June 7, 1983).

New England Power Co. Inc. v. United States, 693 F.2d 239 (1st Cir. 1982).

Bessemer & Lake Erie R. Co. v. ICC, 691 F.2d 1104 (3rd Cir. 1982), *cert. denied* ___ U.S. ___, 103 S. Ct. 2463 (1983).

Revitalization and Regulatory Reform Act and in the Staggers Act, and it affirmed the Commission's use of betterment accounting for track assets. The Court also accepted the Commission's argument that the ICC had reasonably included unused and unuseful assets in the consideration of investment base, because it found that inclusion of those assets would not result in substantial over-valuation of rail assets.

In the ratemaking area, the Commission's first decision allowing a railroad tariff to become effective retroactively—on the date it would have become effective, save for the Commission's erroneous rejection of it—was upheld by the United States Court of Appeals for the Eighth Circuit.[10]

This case arose out of an earlier court proceeding in which the District of Columbia Circuit reversed the ICC's rejection of a Burlington Northern railroad tariff.[11] Thereafter, the Commission permitted Burlington Northern to submit the tariff and to make the rate effective on the date it would have become effective, save for the tariff rejection which the Court of Appeals had reversed. Iowa Power and Light, a petitioner, contended that the tariff's retroactive application was outside the Commission's powers, and that such action violated Section 10761 of the Interstate Commerce Act which requires railroads to charge, and shippers to pay, only that rate in a tariff which is itself in effect.

The Court rejected all of the petitioner's contentions. It deferred to the Commission's view that Section 10761 was designed to prevent discrimination among shippers, and that discrimination was indeed impossible, since Iowa Power and Light was the sole shipper under the tariff. The Court noted that the Act contemplates the Commission's correction of inequities caused by its prior actions—as in this case—and found that the ICC had acted within its statutory powers.

The Commission's first judicially reviewed investigation of a joint-rate cancellation conducted exclusively under Section 10705a of the Staggers Act was upheld by the United States Court of Appeals for the Eighth Circuit.[12] Section 10705a permits joint-rate cancellations without the possibility of suspension, unlike the usual "public interest" cancellation procedures of Section 10705(e).

On the threshold issue of the reviewability of a past Commission decision not to investigate a joint-rate cancellation, the Court found that a no-investigate order was reviewable, but affirmed the Commission's decision not to investigate a complaint because the complaining rail carrier had not shown that a cancellation would have had an adverse impact on competition. In so finding, the Court rejected a challenge to the constitutionality of cancellations as impairments of contracts.

In a key decision involving labor protection, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's rules exempting those states willing to undertake rail service (and their contract operators under state-organized rail programs) from the need to obtain authority to commence or terminate operations over lines that have been ap-

[10] *Iowa Power and Light Co. v. United States*, 712 F.2d 1292 (8th Cir. 1983).

[11] *Burlington Northern R. Co. v. ICC*, 679 F.2d 934 (D.C. Cir. 1982).

[12] *Minneapolis, Northfield & Southern Ry. v. ICC*, 707 F.2d 984 (8th Cir. 1983).

proved for abandonment. The Commission instead created a separate modified certificate procedure under which operators may begin service merely by filing certain information with the agency, and by which operations may be terminated on 60 days notice. Under the rules, no labor protection will be imposed at the time operators terminate rail services, as is the practice in typical abandonment cases where labor protection is mandated by Section 10903(b)(2) of the Staggers Act.

Section 10505(g)(2), which prohibits the Commission from using its exemption authority "to relieve a carrier of its obligation to protect the interests of employees," was enacted while the rulemaking was still before the Commission. For this reason, the central issue in this case concerned the Commission's ability to exempt states from labor-protection obligations.

The Court found that Section 10505(g)(2) did not prohibit the ICC from exempting states from the labor-protection provisions of the Interstate Commerce Act, because labor protection is not a statutory requirement in all abandonment cases. Moreover, the Court found that nothing in the Commission's rules threatens to change labor protection provided in the usual abandonment case. In sum, it found that the Commission had authority under the exemption powers granted to it by Congress in the Staggers Act to create the modified certificate program.

The past fiscal year also brought many judicial decisions interpreting various provisions of the Motor Carrier Act. For instance, the United States Supreme Court decided to review a decision of the United States Court of Appeals for the Eleventh Circuit which remanded one of the Commission's rules implementing Section 10706(b) governing motor carrier rate bureaus.[*] In the Court of Appeals proceeding, petitioners opposed the Commission's proposed rejection of tariffs formulated in violation of rate bureau procedures. The Court of Appeals affirmed the Commission's power to reject tariffs that violate rate bureau agreements, but only as long as a rejection occurs before the tariffs become effective.[*]

The United States Court of Appeals for the Fifth Circuit remanded two motor carrier rulemakings on the grounds that the Commission lacked jurisdiction under its general rulemaking authority to promulgate the rules.

The Court of Appeals first remanded the Commission's fuel-reimbursement program which required that motor carriers pay owner-operators according to an ICC-mandated formula for fuel cost increases over the 1979 cost of fuel.[*] While the Court recognized that the Commission has general rulemaking authority (under Section 10321(a)) to carry out and enforce other provisions of the Interstate Commerce Act affecting carrier/owner-operator relations, it found that the statutory sections relied upon by the ICC in

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[*] *American Trucking Associations, Inc. v. United States*, 688 F.2d 1337 (11th Cir. 1982), cert. granted sub nom. *Interstate Commerce Commission et al. v. American Trucking Associations, Inc. et al.* (Pet. for cert. granted June 20, 1983) (No. 82-1643).

[illegible] Petitions for Supreme Court review of this case are pending.

[*] [illegible] 698 F.2d 1266 (5th Cir. 1983).

promulgating the fuel-reimbursement regulations; specifically, Sections 11101(b), 10101(a)(2), and 10101(a)(6) did not include the power to mandate fuel reimbursement.

Although the Court vacated the Commission's rules insofar as they mandated fuel payments by carriers, it did not disturb rates filed according to the fuel-reimbursement program. The Court instead held that its decision had no retroactive effect, and that the fuel-related rates that were made part of the carriers' rate base did not have to be undone.

In September 1983, the Fifth Circuit also reversed a Commission decision to extend to freight forwarders the same restriction-removal procedures that the Commission wanted to apply to motor carriers.[11] The Court held that none of the statutory authority which the Commission had directly considered and relied upon in its notice of proposed rulemaking and final decision had provided the requisite authority to promulgate the rules.

The Commission had basically relied upon its general rulemaking powers under Section 10321(a), the national transportation policy, and Section 6 of the Motor Carrier Act (Section 10922(i)), in which Congress instructed the Commission to provide for the expeditious removal of restrictions from motor carrier authorities. Following the Fifth Circuit's decision in the *Central Forwarding* case involving the ICC's fuel reimbursement program, the Court found that the Commission could not rely upon the general rulemaking provision or the national transportation policy, because neither of these provisions serve as an independent source of rulemaking authority. The Court also rejected the ICC's reliance upon Section 6, because it expressly applied only to motor carriers.

Though the Court struck down the Commission's freight forwarder rules for lack of statutory authority, it expressly left open the question of whether the Commission could have used its conditioning powers under Section 10923(d)(1) to promulgate the rules. The Court declined to decide this issue, since the Commission had not discussed the conditioning power in either its notice of proposed rulemaking or final decision, and because the public did not have an opportunity to comment on it.

In the *Aero Mayflower* case,[12] the United States Court of Appeals for the Seventh Circuit vacated the Commission's rejection of protests by four household goods common carriers to a household goods contract carrier application. The Commission interpreted the protest standards under Section 10923(b)(4) for parties seeking to protest contract carrier applications, and, based on its interpretation of the requirement that protestants must have "actively or in good faith solicited traffic within the scope of the application," decided that none of the four carriers were qualified protestants. Without addressing the validity of the Commission's protest standards, the Court concluded that the Commission could not apply the new standards without giving adequate notice to protesting carriers and advising them in advance of the showing they would need to make.

[11] [illegible]

[12] Aero Mayflower Transit Co., Inc. v. ICC, 699 F.2d 938 (7th Cir. 1983).

The Commission also had several motor carrier victories this year. For example, the United States Court of Appeals for the Seventh Circuit affirmed the Commission's interpretative statement on the scope of the ICC's jurisdiction over a Department of Defense (DOD) transportation regulation.[19]

The Commission's rules governing reweighing of household goods shipments are such that a carrier may benefit from the reweighing of a shipment if more weight is registered at the second weighing. Department of Defense regulations, however, state that charges for DOD shipments are to be based on the lower of the two weights, so that a reweighing of a DOD shipment can never operate to a carrier's benefit. The Court affirmed the Commission's interpretative statement by finding that the Commission's regulations did not override or repeal the DOD regulations governing household-goods reweighing on government-traffic shipments.

Most recently, the Commission's new single-source leasing policy—under which equipment and drivers leased from a single source to private carriers are presumed to be engaged in exempt private carriage if the lease satisfies certain minimum conditions—was affirmed by the United States Court of Appeals for the Eleventh Circuit.[20]

The Commission had earlier adopted a policy disfavoring such leases, because it presumed that any single-source lease constituted for-hire carriage. Although the presumption was theoretically rebuttable, and although the Commission refined its single-source analysis over the years, that basic presumption remained the keystone of the agency's policy, and it effectively precluded almost all single-source leases. The new policy upheld by the Court of Appeals eliminates the presumption against single-source leases, and permits leasing to private carriers under conditions similar to those governing single-source leases to regulated carriers.

There were also several significant developments in the motor carrier operating rights area this past fiscal year. In one case, the United States Court of Appeals for the Tenth Circuit affirmed in substantial part the Commission's decision to grant three unrestricted certificates (*i.e.*, not restricted to the handling of freight auxiliary to, or supplemental of, rail service) to a rail-affiliated motor carrier.[21] The Commission had refused to impose the auxiliary-to-rail restrictions that it had usually imposed in the past on such grants of authority, absent a showing of "special circumstances."[22]

In upholding most aspects of the Commission's decision, the Court concluded that the case's facts established that "special circumstances" existed for the authorization of unre-

[19] *Allied Van Lines, Inc. v. ICC*, 708 F.2d 297 (7th Cir. 1983).

[20] *Ryder Truck Lines, Inc. v. United States*, 716 F.2d 1369 (11th Cir. 1983). The Court had previously entered a stay of the new policy's effectiveness. The Court recently ordered a continuance of the stay pending disposition of a petition for Supreme Court review of the lower court's decision.

[21] *American Trucking Associations, Inc. v. ICC*, 703 F.2d 459 (10th Cir. 1983).

[22] In Ex Parte MC-156, *Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates*, 132 M.C.C. 978 (1983), affirmed on appeal *sub nom. American Trucking Associations, Inc. v. I.C.C.*, 722 F.2d 1243 (5th Cir. 1984), the Commission announced that "special circumstances" are no longer required to be shown in support of unrestricted motor carrier licensing applications by rail carriers and rail affiliates.

stricted grants of authority, even though the term "special circumstances" was not used by the Commission in its decision. The Court held that the ICC's findings were equivalent to a finding that special circumstances justify a grant of unrestricted authority, and that substantial evidence supported the decision.

In the three years since enactment of the Motor Carrier Act, and with the approval of the courts, the Commission has required less detailed evidence to support a grant of broadening authority than it did prior to the Act's 1980 implementation.[23] Judicial decisions in the motor carrier operating rights area this past fiscal year continued this practice. For example, relative to evidence required to support a showing that a proposed service would serve a useful public purpose, the courts approved broad grants of authority based on the existence of a single shipper, on evidence of a shipper's business practices which satisfactorily explained the reason for the shipper's presentation of imprecise data, on evidence of a carrier's past operations, and on information supplied by a well-known national-account shipper.[24] The courts also upheld grants of generic commodity classes based on evidence of a public need for transportation of commodities within the classification.[25]

The appeals courts also issued several decisions concerning the Commission's authorization of bulk service in grants of motor carrier operating authority. In the *American Trucking Association* case[26] (discussed in the 1981 Annual Report at page 75), the United States Court of Appeals for the Fifth Circuit held, among other things, that in new, general-commodities authority grants, the Commission must require applicants to demonstrate their specific fitness, willingness, and ability to perform bulk and household goods service. However, the Court left to the Commission the determination of the evidence necessary to support the positive-fitness finding. The United States Court of Appeals for the Third Circuit issued three decisions concerning the degree of evidence required to support the inclusion of bulk service in general commodities grants[27,28,29].

In *Port Norris I*, the Court found that an applicant was *unwilling* to perform

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[23] Compare *Central Freight Lines, Inc. v. ICC*, 669 F.2d [illegible] (5th Cir. 1981) (affirmed grants of operating authority in case involving over 1,700 witnesses) with *Steere Tank Lines, Inc. v. ICC*, 714 F.2d 1300 (5th Cir. 1983) (affirmed finding of public need to transport building materials, chemicals, plastic products, paper and paper products based on evidence of a single shipper).

[24] *C&H Transportation Co., Inc. v. ICC*, 704 F.2d 834 (5th Cir. 1983) (affirmed nationwide grant to new carrier based on shipper evidence of business practices and listing of representative points and states); *J.H. Rose Truck Lines, Inc. v. ICC*, 683 F.2d 943 (5th Cir. 1982) (affirmed 20-state general commodities authority based on traffic abstracts of trip-lease operations); *Steere Tank Lines, Inc. v. ICC*, 714 F.2d 1300 (5th Cir. 1983) (affirmed finding of public need to transport specified commodities nationwide based on evidence of a single shipper).

[25] See, e.g., *Refrigerated Transport Co., Inc. v. ICC*, 707 F.2d 497 (11th Cir. 1983) (affirmed a grant of "food and related products" and authority based on evidence submitted by shippers of beverages in plastic and glass containers); *RTC Transp., Inc. v. ICC*, 708 F.2d 620 (11th Cir. 1983) (affirmed a grant of "food and food products" authority based on evidence submitted by a shipper of pork products).

[26] *American Trucking Association, Inc. v. ICC*, 659 F.2d 452 (5th Cir. 1981), clarified and enforced through mandamus, 669 F.2d 957 (1982), *cert. denied*, ___ U.S. ___, 103 S. Ct. 1272 (1983).

[27] *Port Norris Express Co., Inc. v. ICC*, 687 F.2d 803 (3rd Cir. 1982) (*Port Norris I*).

[28] *Port Norris Express Co., Inc. v. ICC*, 697 F.2d 497 (3rd Cir. 1982) (*Port Norris II*).

[29] *Port Norris Express Co., Inc. v. ICC*, No. 82-1421 (3rd Cir. March 8, 1983) (unpublished order) (*Port Norris III*).

bulk service and, for that reason, stated that the Commission could not infer the applicant's fitness to perform bulk service. In *Port Norris II*, however, there was no challenge to the applicant's willingness or fitness to perform bulk service, and the Court found that there was sufficient evidence of public need for bulk service, based upon the shippers' statements. In *Port Norris III*, the Third Circuit again affirmed a general-commodities grant without a bulk restriction, based upon the Commission's contentions that an applicant had the general capacity to perform bulk service—since its equipment could be converted to permit transportation of bulk commodities—and on shippers' statements expressing a need for bulk service.

During fiscal year 1982, two courts of appeals found the "fit, willing, and able" requirement in Section 5 of the Motor Carrier Act applicable to restriction-removal proceedings.[1] This fiscal year, however, in the Commission's first restriction-removal victory, and in the first judicially reviewed interpretation of "reasonable broadening" under the restriction removal provisions of the Motor Carrier Act,[2] the United States Court of Appeals for the Fifth Circuit upheld as reasonable the Commission's broadening of many existing certificates with circumscribed commodity descriptions to wider generic commodity classes.

[1] *Steere Tank Lines, Inc. v. ICC*, 666 F.2d 255 (5th Cir. 1982), cert. denied, ___ U.S. ___, 103 S. Ct. 1264 (1983); *Ritter Transportation, Inc. v. ICC*, 684 F.2d 86 (D.C. Cir. 1982), cert. denied, ___ U.S. ___, 103 S. Ct. 1272 (1983).

[2] *Steere Tank Lines, Inc. v. ICC*, [illegible] F.2d [illegible] (5th Cir. 198[illegible]).

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting, auditing, financial analysis, cost development, and reporting. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules, the examination and analysis of accounts and financial statements, and the compilation and publishing of transportation statistics and cost studies.

Accounting and Reporting

The Commission's prescribed accounting and reporting systems are continually reviewed with the objective of providing current useful information. This review program includes the modernization of current systems to keep pace with generally accepted accounting principles (GAAP), and to reduce reporting requirements in order to decrease reporting burdens while retaining those requirements which provide data the Commission needs.

During fiscal year 1983, the Commission approved the following changes:

- Final rules adopting a methodology for the indexing of the annual operating revenues of trucking companies and railroads. This methodology will allow the Commission to eliminate the effects of inflation from the classification process, and thereby prevent carriers from being subjected to accounting and reporting requirements because of revenue increases caused by inflation.[1]
- A final adopting reductions to Annual Report Form M-H, filed by household goods companies, which became effective with the report for the year beginning January 1, 1982. The reductions affect about 190 companies and will save approximately 4,000 staff hours annually.[2]
- A final adopting the depreciation method of accounting for railroad track structure which became effective at the beginning of calendar year 1983. This change means that all railroad operating property (except land) will be accounted for in a similar manner. The Commission's decision was based on the fact that depreciation accounting is conceptually sounder than the former retirement-replacement-betterment method because it will provide data from which an accurate investment base can be developed, and because the costs of assets consumed can be matched with revenues earned.[3]
- A final rule revising the Commission's disclosure requirements for related-party transactions to align the ICC's rules with Financial Accounting Standards Board Statement No. 57, Related Party Disclosures.[4]
- A final rule eliminating requirements for railroads to maintain property records in accordance with the list of units of property required by Valuation Order No. 3, effective January 1, 1933. This list was much more detailed than that found in the Uniform System of Accounts (49 CFR Part 1201), and it represented a

[1] *Indexing the Annual Operating Revenues of Motor Carriers of Property*, [illegible] I.C.C. 4[illegible] (1982) and *Railroad Classification Index*, [illegible] I.C.C. [illegible] (1983).

[2] *Revisions to the Annual Report of Motor Carriers of Household Goods, Form M-H*, 132 M.C.C. 974 (1982).

[3] *Alternative Methods of Accounting for Railroad Track Structures*, 367 I.C.C. 157 (1983).

[4] Finance Docket No. 38[illegible]8, *Related Party Disclosures* (not printed), decided March 18, 1983.

burdensome and unnecessary recordkeeping requirement. The level of detail required by the Uniform System of Accounts is sufficient for the Commission's needs.[5]

Cost and Financial Analysis

During fiscal year 1983, the Commission evaluated the cost and financial evidence submitted by railroads and other entities in connection with rates charged for the transportation of coal and other bulk commodities. Evidence was analyzed in connection with proceedings generated by Section 229 (the Savings Provision) of the Staggers Rail Act of 1980. The Commission also analyzed cost and financial evidence submitted in connection with motor carrier requests for general rate increases. These analyses included an assessment of the revenue needed to cover operating costs and to provide a fair and reasonable return on invested capital. Cost evidence was analyzed in determining the reasonableness of bus passenger fares in intrastate rate proceedings, and in determining whether rates covered variable costs in motor carrier bus exit petitions.

The Commission decided to issue a notice of proposed rulemaking which would revise its standards for railroad revenue adequacy.[6] Specific changes under consideration are: (1) calculation of Return on Investment (ROI) to consider exclusively all elements of income, expense, and investment, (2) use of normalized or weighted normalized data to compute ROI, (3) computation of ROI on a consolidated basis to include railroad affiliates, and (4) conversion from an original cost investment base to one based on use of current or replacement costs in revenue adequacy proceedings, and on the use of current cost data in other regulatory proceedings. The Commission also conducted a study which determined that the railroad industry's current cost of capital, or fair rate of return, for comparison with returns on net transportation investment was 17.7 percent.[7]

The financial condition of large transportation companies continued to be monitored by the Commission in order to determine whether they were financially able to provide adequate service to shippers. Quarterly reports were publicly released showing the latest quarter and twelve-month-period earnings, traffic volume and rate-of-return data for Class I railroads, the 100 largest trucking companies, the 15 largest household goods companies, and the 10 largest bus companies. Updated analyses were regularly submitted to Congress which discussed the current cash position and estimated cash needs of the Kansas City Terminal Railway Company, the Commission's directed-service railroad over the Chicago, Rock Island and Pacific line. Only two Federal loan guarantees, both applicable to the Missouri-Kansas-Texas Railroad Company, remain outstanding. The Department of Justice has settled all of the loan guarantees to railroads that had defaulted.

[5] [illegible] Docket No. 38848, Eliminating of [illegible] Valuation Order No. [illegible] [illegible] the Regulation [illegible] Reports (not printed), decided March [illegible] 1983.

[6] Ex Parte No. 393 (Sub-No. 1), Standards for Railroad Revenue Adequacy (not printed), decided February 16, 1983.

[7] Railroad Cost of Capital—1982, 367 I.C.C. 662 (1983).

Cost Development

After considering the decision of the U.S. Court of Appeals for the Fifth Circuit,[8] the Commission terminated regulations requiring trucking companies to reimburse owner-operators for a portion of their fuel costs,[9] effective July 23, 1983. The Commission will continue to monitor diesel fuel prices and in the public interest will make the weekly summary available.

As a result of recommendations set forth by the General Accounting Office, the Commission instituted a task force to review its User Fee Program. A thirteen-week cost study was designed and implemented on May 23, 1983, to capture direct labor data applicable to current and proposed user-fee items. The final results of the study are scheduled for release in fiscal year 1984.

During fiscal year 1983, the commission released the first regional cost studies developed using the new Uniform Railroad Costing System (URCS). Also released was a URCS movement costing program and a revised costing procedures publication. The public comment period in the URCS rulemaking implementing URCS was extended into early fiscal year 1984.[10]

The Commission calculated two Cost Recovery Percentages (CRP) during fiscal year 1983. The first CRP was 133.5 percent,[11] and the second CRP was 407.5 percent.[12] When it falls within a prescribed range, the Commission's calculated CRP serves as the jurisdictional threshold for rate regulation of market-dominant traffic for the period beginning October 1, 1983. Since the Commission's calculated CRP is higher than the maximum 175-percent level mandated by the Staggers Rail Act of 1980, the 175-percent figure will be used rather than the calculated figure.

The Commission proposed a change in the maximum revenue/variable cost ratio for rates on non-ferrous recyclables or recycled materials, from 146 percent to 152 percent. The new ratio was based on 1981 Rail Form A data and 1981 current cost of capital. The Commission is seeking public comment on whether the revenue/variable cost ratio should be re-examined periodically, what magnitude of change should require a change in the prescribed ratio, and what effect a change, if adopted, should have on future refund or reparation orders.[13]

Within the past fiscal year, the Commission issued four quarterly decisions which published the Rail Cost Adjustment Factor (RCAF) as a part of a new, streamlined, general rate-increase procedure.[14] On December 16, 1982, the Commission approved an increase of up to one percent above the level permitted by the decision served on December 22, 1981. On March 15, 1983, and on June 16, 1983, the Commission voted to allow no rate actions

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[8] Central Forwarding Co. et al. v. Interstate Commerce Commission (5th Circuit, May 13, 1983).

[9] Ex Parte No. [illegible] (Sub-No. 4), Modification of the Motor Carrier Fuel Surcharge Program (not printed), decided June [illegible] 1983.

[10] Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable [illegible] [illegible] Threshold and [illegible] (not printed), decided May [illegible] 1983, and September [illegible] 1983.

[11] Ex Parte No. [illegible] Cost Recovery Percentage (CRP) (not printed), decided [illegible] 1982.

[12] Ex Parte No. [illegible] Cost Recovery Percentage (CRP) (not printed), decided August 9, 1983.

[13] Ex Parte No. 394 (Sub-No. 1), Cost Ratio for Recyclables—1983 Determination (not printed), decided June [illegible] 1983.

[14] Ex Parte No. [illegible] (Sub-No. [illegible]), Railroad Cost Recovery Procedures (not printed), decided December 16, 1982, March 15, 1983, June 16, 1983, and September [illegible] 1983.

because the index fell below a prior level. On September 19, 1983, the Commission voted to allow an increase of up to .2 percent. The RCAF was rebased to October 1, 1982, in the Commission's decision decided December 16, 1982.

The Commission also issued a notice of proposed rulemaking contemplating the adoption of a substantially modified version of an "All Inclusive Index" of railroad costs submitted by the Association of American Railroads. Modifications to AAR's Index were made after a review of suggestions from individual shippers, shipper associations, trade associations, and state and federal government agencies.[15]

Directed Service

On September 26, 1979, the Commission concluded that the Rock Island Railroad had exhausted all of its operating funds and directed the Kansas City Terminal Railway Company (KCT) to operate over the entire Rock Island system beginning October 5, 1979. This directed-service authority expired on March 23, 1980, and was the first commission directed-service experience involving such a large and complex operation. As of September 30, 1983, $88.9 million of the total appropriation of $91.1 million had been disbursed to the KCT. The Commission ordered that all accounting operations be terminated on March 31, 1983.[16]

Subsequent to the termination of directed service on March 23, 1980, and with advice from the Department of Transportation, the Commission authorized 24 railroads to operate certain Rock Island line segments without government funding. The railroads provided service on a voluntary basis so that a substantial portion of Rock Island service could be continued. A number of railroads expressed an interest in purchasing Rock Island lines which they were operating, and some lines were purchased. The ICC also authorized the State of South Dakota and three railroads to rehabilitate certain trackage segments. Federal subsidy totaled approximately $5.4 million, of which $2.4 million was disbursed to South Dakota and three million dollars to the three railroads.

Auditing

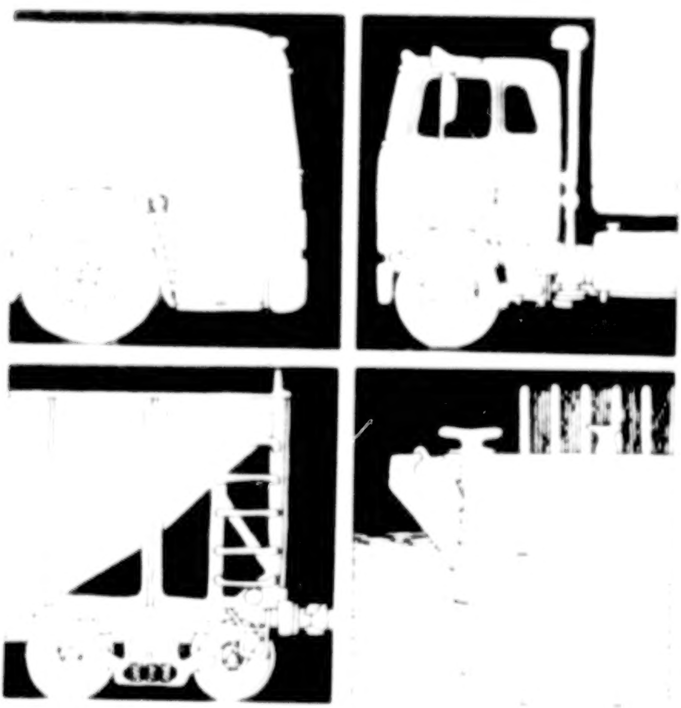
Important oversight functions performed by Commission auditors in fiscal year 1983 included the following:

- The performance of audits at most Class I railroads and various motor companies in order to attest to the integrity of the financial and statistical data reported to the Commission.
- The performance of audits at various railroads in order to verify the input source data these railroads provided to the Association of American Railroads for the computation of a rail recovery cost index.
- Examinations of the accounting records of directed-service operations.
- Investigations of transactions between railroads and affiliated companies to determine the impact on the railroads' financial conditions.

[15] Ex Parte No. 290 (Sub No. 1), Railroad Cost Recovery Procedures (not printed), decided June 20, 1983.

[16] Directed Service Order No. 1398, Kansas City Term. Ry. Co. — Operation — Chicago, R. I. & P. (not printed), decided December 2, 1981.

- Investigation of carrier violations of Commission regulations, and referral of violations to appropriate government enforcement agencies
- Investigations of the financial and operational data contained in projections prepared by Conrail for a report to Congress on that railroad's profitability
- Performance of a regular annual internal audit of the Commission's fiscal operations



92

APPENDIX A

Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organization chart.

STAFF OFFICIALS

Office of the Chairman	
Chief of Staff	Robert G. Shepherd, Jr.
Office of Public Affairs	
Director	Robert R. Dahlgren
Office of Governmental Affairs	
Director	Bruce N. Hatton
Office of Legislative Counsel	
Legislative Counsel	Janice M. Rosenak
Small Business Assistance Office	
Director	Dan G. King
Office of the Managing Director	
Managing Director	Martin E. Foley (Acting)
Director, Personnel Office	Richard H. Mooers
Chief, Budget and Fiscal Office	Mary G. Hogya
Chief, Administrative Services	Virgil L. Schultz
Chief, Systems Development	Edward F. Welkener
Office of the Secretary	
Secretary	Agatha L. Mergenovich
Assistant Secretary	James H. Bayne
Office of the General Counsel	
General Counsel	John H. Broadley
Deputy General Counsel	Robert S. Burk
Associate General Counsel	Kathleen M. Dollar
Associate General Counsel	Henri F. Rush
Associate General Counsel	Ellen D. Hanson
Office of the Proceedings	
Director	Heber P. Hardy
Associate Director	Richard S. Lewis
Deputy Director, Section of Railroads	Louis E. Gitomer
Deputy Director, Section of Motor Carriers	Howell Sporn

STAFF OFFICIALS—Continued	
Office of Transportation Analysis	
Director	William R. Southard
Associate Director	Richard H. Klem
Chief, Section of Rail Services Planning	Michael E. Sullivan
Chief, Section of Energy and Environment	Carl P. Bausch
Chief, Section of Research and Analysis	Leland L. Gardner
Office of Hearings	
Chief Administrative Law Judge	David H. Allard
Assistant Chief Administrative Law Judge	James E. Hopkins
Assistant Chief Administrative Law Judge	Nolin J. Bilodeau
Office of Special Counsel	
Special Counsel	Edward J. Schack
Deputy Special Counsel	Clarke W. Brinckerhoff
Bureau of Accounts	
Director	Ronald S. Young
Deputy Director	William F. Moss III
Office of Compliance and Consumer Assistance	
Director	J. Warren MacFarland
Associate Director	Bernard Gaillard
Deputy Director, Section of Operations	John H. O'Brien
Deputy Director, Section of Enforcement	Charles E. Wagner
Bureau of Traffic	
Director	Neil S. Llewellyn (Acting)

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS

Region I

Regional Headquarters	Robert L. Abare, Regional Director, 150 Causeway Street, Room 501, Boston, MA 02114
Connecticut	135 High Street, Hartford, CT 06103
Maine	76 Pearl Street, Room 303, Portland, ME 04101
Massachusetts	150 Causeway Street, Room 501, Boston, MA 02114
	201 Federal Building, 1500 Main Street, Springfield, MA 01103
New Hampshire	James C. Cleveland Federal Building, 55 Pleasant Street, Room 314, Concord, NH 03301
New Jersey	744 Broad Street, Room 552, Newark, NH 07102
New York	910 Federal Building, 111 West Huron Street, Buffalo, NY 14202
	Jacob K. Javits Federal Building, 26 Federal Plaza, Room 1807, New York, NY 10278
Rhode Island	John E. Fogarty Federal Building, 24 Weybossett Street, Room 102, Providence, RI 02903
Vermont	87 State Street, Room 303, Montpelier, VT 05602 Mailing Address: P.O. Box 548

Region II

Regional Headquarters	M. Faith Angell, Regional Director, Federal Reserve Bank Building, 101 North 7th Street, Room 620, Philadelphia, PA 19106
Delaware	See nearest ICC Field Office in New Jersey, Maryland or Pennsylvania
Maryland	1025 Federal Building, Charles Center, 31 Hopkins Plaza, Baltimore, MD 21201
Ohio	1301 Superior Avenue, Room 210, Cleveland, OH 44114
Pennsylvania	Federal Reserve Bank Building, 101 North 7th Street, Room 620, Philadelphia, PA 19106
	The Convention Tower Building, 4th Floor, 960 Pennsylvania Avenue, Room 405, Pittsburgh, PA 15222

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS—Continued

Virginia	10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240
West Virginia	416 Old Post Office Building, 12th and Chapline Sts., Wheeling, WV 26003

Region III

Regional Headquarters	Benjamin P. McKenzie, Regional Director, 1776 Peachtree Street, NW, Room 300 Atlanta, GA 30309
Alabama	2121 Building, Suite 1616, 2121 8th Avenue North, Birmingham AL 35203
Florida	4051 Carmichael Avenue, Suite 233, Jacksonville, FL 32207
	Monterey Building, Suite 101, 8410 NW 53rd Terrace, Miami, FL 33166
Georgia	1776 Peachtree Street, NW, Room 300, Atlanta, GA 30309
Kentucky	426 U.S. Post Office, 601 West Broadway, Louisville, KY 40202
Mississippi	Federal Building, Suite 1441, 100 West Capitol Street, Jackson, MS 39201
North Carolina	Room CC-516 Mart Office Building, 800 Briar Creek Road, Charlotte, NC 28205
South Carolina	Strom Thurmond Federal Building, 1835 Assembly Street, Suite 866, Columbia, SC 29201
Tennessee	Room 211, Federal Office Building, 167 North Main Street, Memphis, TN 38103
	Federal Building, 801 Broadway, A422, Nashville, TN 37203

Region IV

Regional Headquarters	William Redmond, Jr., Regional Director, Everett McKinley Dirksen Building, Room 1304, 219 South Dearborn Street, Chicago, IL 60604
Illinois	Everett McKinley Dirksen Building, Room 1304, 219 South Dearborn Street, Chicago, IL 60604

Indiana	429 Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204
Michigan	201 Corr Building, 300 East Michigan, Lansing, MI 48933
Minnesota	414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401
North Dakota	268 Federal Building and U.S. Post Office, 675 2nd Avenue North, Fargo, ND 58102
South Dakota	Room 322, Federal Building, Pierre, SD 57501
Wisconsin	U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202

Region V

Regional Headquarters	Jack K. Huff, Regional Director, 411 West 7th Street, Suite 600, Fort Worth, TX 76102
Arkansas	3108 Federal Building, Little Rock, AR 72201
Iowa	518 Federal Building, 210 Walnut Street, Des Moines, IA 50309
Kansas	101 Litwin Building, 110 N. Market, Wichita, KS 67202
Louisiana	T-9038 Federal Building, U.S. Post Office, 701 Loyola Avenue, New Orleans, LA 70113
Missouri	600 Federal Building, 911 Walnut Street, Kansas City, MO 64106
	210 North 12 Street, Room 1465, St. Louis, MO 63101
Nebraska	Room 903, Federal Office Building, 106 South 15th Street, Omaha, NE 68102
Oklahoma	240 Old U.S. Post Office and Courthouse, 215 Northwest 3rd Street, Oklahoma City, OK 73102
Texas	411 West 7th Street, Suite 600, Fort Worth, TX 76102
	8610 Federal Building and U.S. Courthouse, 515 Rusk Avenue, Houston, TX 77002

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS—Continued

Region VI

Regional Headquarters	Arthur E. Bacon, Regional Director, Suite 500, 211 Main Street, San Francisco, CA 94105
Alaska	Federal Building and U.S. Courthouse, 701 C Street, Box 7, Anchorage, AK 99513
Arizona	2028 Federal Building, 230 North 1st Avenue Phoenix, AZ 85025
California	1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012
	211 Main Street, Suite 500, San Francisco, CA 94105
Colorado	492 U.S. Customs House, 721-19th Street, Denver, CO 80202
Idaho	1471 Shoreline Drive, Room 110, Boise, ID 83702
Montana	Room 222, U.S. Post Office Building, 2602 First Avenue North, Billings, MT 59101
Nevada	107 Federal Building, 705 North Plaza Street, Carson City, NV 89701
New Mexico	1106 Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101
Oregon	Crown Plaza, Suite 250, 1500 SW First Street, Portland, OR 97201
Utah	503 U.S. Post Office and Courthouse, 350 South Main Street, Salt Lake City, UT 84101
Washington	858 Federal Building, 915 2nd Avenue, Seattle, WA 98174
Wyoming	105 Federal Building and U.S. Courthouse, 111 South Wolcott, Casper, WY 82601

INTERSTATE COMMERCE COMMISSIONERS 1887-1983

	Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1.	COOLEY, Thomas M.	MI	Rep.	Mar. 31, 1887	Jan. 12, 1892
2.	MORRISON, William R.	IL	Dem.	Mar. 31, 1887	Dec. 31, 1897
3.	SCHOONMAKER, Augustus	NY	Dem.	Mar. 31, 1887	Dec. 31, 1890
4.	WALKER, Aldace F.	VT	Rep.	Mar. 31, 1887	Mar. 31, 1889
5.	BRAGG, Walter L.	AL	Dem.	Mar. 31, 1887	Aug. 21, 1891
6.	VEAZEY, Wheelock G.	VT	Rep.	Sept. 10, 1889	Dec. 20, 1896
7.	KNAPP, Martin A.	NY	Rep.	Mar. 2, 1891	Dec. 12, 1910
8.	McDILL, James W.	IA	Rep.	Jan. 13, 1892	Feb. 28, 1894
9.	CLEMENTS, Judson C.	GA	Dem.	Mar. 17, 1892	June 18, 1917
10.	YEOMANS, James D.	IA	Dem.	May 2, 1894	Mar. 6, 1905
11.	PROUTY, Charles A.	VT	Rep.	Dec. 21, 1896	Feb. 2, 1914
12.	CALHOUN, William J.	IL	Rep.	Mar. 21, 1898	Sept. 30, 1899
13.	FIFER, Joseph W.	IL	Rep.	Nov. 4, 1899	Dec. 30, 1905
14.	COCKRELL, Francis M.	MO	Dem.	Mar. 11, 1905	Dec. 31, 1910
15.	LANE, Franklin K.	CA	Dem.	July 2, 1906	Mar. 5, 1913
16.	CLARK, Edgar E.	IA	Rep.	July 31, 1906	Aug. 13, 1921
17.	HARLAN, James S.	IL	Rep.	Aug. 28, 1906	Dec. 31, 1918
18.	McCHORD, Charles C.	KY	Dem.	Dec. 31, 1910	Jan. 1, 1926
19.	MEYER, Balthasar H.	WI	Rep.	Dec. 31, 1910	Apr. 30, 1939
20.	MARBLE, John H.	CA	Dem.	Mar. 10, 1913	Nov. 21, 1913
21.	HALL, Henry C.	CO	Dem.	Mar. 21, 1914	Jan. 13, 1928
22.	DANIELS, Winthrop M.	NJ	Dem.	Apr. 6, 1914	July 1, 1923
23.	AITCHISON, Clyde B.	OR	Rep.	Oct. 5, 1917	July 10, 1952
24.	WOOLLEY, Robert W.	VA	Dem.	Oct. 5, 1917	Dec. 31, 1920
25.	ANDERSON, George W.	MA	Dem.	Oct. 15, 1917	Nov. 5, 1918
26.	EASTMAN, Joseph B.	MA	Ind.	Feb. 17, 1919	Mar. 15, 1944
27.	FORD, Henry J.[1]	NJ	Dem.	June 11, 1920	Mar. 4, 1921
28.	POTTER, Mark W.	NY	Dem.	June 24, 1920	Feb. 20, 1925
29.	ESCH, John J.	WI	Rep.	Mar. 28, 1921	May 29, 1928
30.	CAMPBELL, Johnston B.	WA	Rep.	May 5, 1921	Jan. 6, 1930

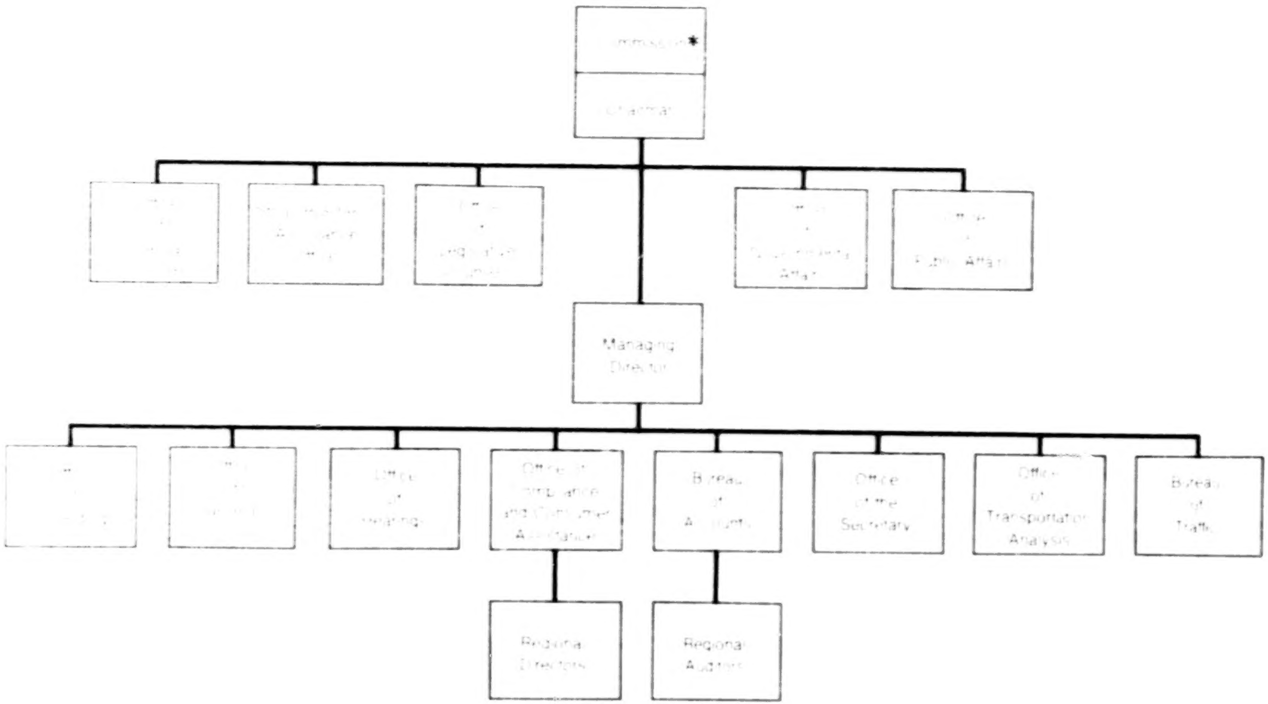
[1] Recess appointment only, not confirmed.

	Interstate Commerce Commissioners	*State*	*Party*	*Oath of Office*	*End of Service*
31.	LEWIS, Ernest I.	IN	Rep.	May 5, 1921	Dec. 31, 1932
32.	COX, Frederick I.	NJ	Rep.	Sept. 1, 1921	Dec. 31, 1926
33.	McMANAMY, Frank	DC	Dem.	June 28, 1923	Apr. 30, 1939
34.	WOODLOCK, Thomas F.	NY	Dem.	Apr. 1, 1925	Aug. 31, 1930
35.	TAYLOR, Richard V.	AL	Dem.	Jan. 16, 1926	Dec. 31, 1929
36.	BRAINERD, Ezra Jr.	OK	Rep.	Feb. 23, 1927	Dec. 31, 1933
37.	PORTER, Claude R.	IA	Dem.	Jan. 28, 1928	Aug. 17, 1946
38.	FARRELL, Patrick J.	DC	Dem.	June 7, 1928	Dec. 31, 1934
39.	LEE, William E.	ID	Rep.	Jan. 18, 1930	Aug. 18, 1953
40.	TATE, Hugh M.	TN	Rep.	Feb. 28, 1930	Sept. 16, 1937
41.	MAHAFFIE, Charles D.	DC	Dem.	Sept. 2, 1930	Dec. 31, 1954
42.	MILLER, Carroll	PA	Dem.	June 14, 1933	Dec. 24, 1949
43.	SPLAWN, Walter M. W.	TX	Dem.	Feb. 1, 1934	June 30, 1953
44.	CASKIE, Marion M.	AL	Dem.	Aug. 26, 1935	Mar. 31, 1940
45.	ROGERS, John L.	TN	Rep.	Sept. 16, 1937	Apr. 30, 1952
46.	ALLDREDGE, J. Haden	AL	Dem.	May 1, 1939	Oct. 31, 1955
47.	PATTERSON, William J.	ND	Ind.	July 31, 1939	July 10, 1953
48.	JOHNSON, J. Monroe	SC	Dem.	June 3, 1940	June 4, 1956
49.	BARNARD, George M.	IN	Rep.	Dec. 2, 1944	Jan. 2, 1949
50.	MITCHELL, Richard F.	IA	Dem.	Feb. 3, 1947	June 15, 1959
51.	CROSS, Hugh W.	IL	Rep.	Apr. 11, 1949	Nov. 25, 1955
52.	KNUDSON, James K.	UT	Rep.	Apr. 20, 1950	May 22, 1954
53.	ELLIOTT, Kelso	IN	Rep.	July 10, 1952	Feb. 29, 1956
54.	ARPAIA, Anthony F.	CT	Dem.	July 11, 1952	Mar. 15, 1960
55.	CLARKE, Owen	WA	Rep.	July 10, 1953	Jan. 15, 1958
56.	FREAS, Howard G.	CA	Rep.	Aug. 18, 1953	Dec. 31, 1966
57.	TUGGLE, Kenneth H.	KY	Rep.	Sept. 8, 1953	July 31, 1975
58.	WINCHELL, John H.	CO	Rep.	July 28, 1954	Apr. 3, 1961
59.	HUTCHINSON, Everett	TX	Dem.	Feb. 1, 1955	Mar. 31, 1965
60.	MURPHY, Rupert L.	GA	Dem.	Dec. 30, 1955	Aug. 31, 1978
61.	MINOR, Robert W.	OH	Rep.	Feb. 15, 1956	Sept. 30, 1958
62.	WALRATH, Laurence K.	FL	Dem.	Mar. 29, 1956	June 30, 1972
63.	McPHERSON, Donald P., Jr.	PA	Rep.	June 4, 1956	Mar. 29, 1963
64.	GOFF, Abe McGregor	ID	Rep.	Feb. 12, 1958	July 30, 1967
65.	WEBB, Charles A.	VA	Rep.	Sept. 30, 1958	Mar. 31, 1967
66.	HERRING, Clyde E.	IA	Dem.	Sept. 21, 1959	May 25, 1964
67.	BUSH, John W.	OH	Dem.	Apr. 3, 1961	Nov. 2, 1972
68.	TUCKER, William H.	MA	Dem.	Apr. 3, 1961	Dec. 31, 1967
69.	TIERNEY, Paul J.	MD	Rep.	Mar. 29, 1963	Feb. 28, 1970
70.	BROWN, Virginia Mae	WV	Dem.	May 25, 1964	July 23, 1979
71.	DEASON, Willard	TX	Dem.	Sept. 8, 1965	July 31, 1975
72.	STAFFORD, George M.	KS	Rep.	Apr. 26, 1967	Aug. 31, 1980
73.	SYPHERS, Grant E.	CA	Rep.	July 31, 1967	Feb. 5, 1968
74.	HARDIN, Dale W.	IL	Rep.	July 31, 1967	Aug. 31, 1977

	Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
75.	BURKE, Wallace R.	CT	Dem.	Aug. 21, 1968	June 28, 1969
76.	JACKSON, Donald L.	CA	Rep.	Mar. 20, 1969	June 30, 1972
77.	GRESHAM, Robert C.	MD	Rep.	Dec. 15, 1969	June 18, 1982
78.	BREWER, W. Donald	CO	Rep.	July 23, 1970	June 30, 1974
79.	WIGGIN, Chester M. Jr.	NH	Rep.	Oct. 24, 1972	July 31, 1973
80.	McFARLAND, Alfred T.	TN	Ind.	Nov. 1, 1972	Nov. 10, 1977
81.	MONTEJANO, Rodolfo[1]	CA	Dem.	Nov. 3, 1972	Mar. 2, 1973
82.	O'NEAL, A. Daniel, Jr.	WA	Dem.	Apr. 12, 1973	Dec. 31, 1979
83.	CLAPP, Charles L.	MA	Rep.	Mar. 14, 1974	March 19, 1982
84.	CORBER, Robert J.	VA	Rep.	Mar. 13, 1975	Dec. 1, 1976
85.	CHRISTIAN, Betty Jo	TX	Dem.	Apr. 7, 1976	Dec. 31, 1979
86.	TRANTUM, Thomas A.	CT	Rep.	July 23, 1979	July 31, 1981
87.	GASKINS, Darius W.	DC	Dem.	July 23, 1979	Feb. 1, 1981
88.	ALEXIS, Marcus	IL	Dem.	Aug. 27, 1979	June 30, 1981
89.	GILLIAM, Reginald E.	VA	Dem.	Apr. 21, 1980	Feb. 1, 1983
90.	TAYLOR, Reese H., Jr.*	NV	Rep.	June 25, 1981	
91.	STERRETT, Malcolm M. B.*	MD	Rep.	Feb. 12, 1982	
92.	ANDRE, Frederic N.*	IN	Rep.	Mar. 19, 1982	
93.	SIMMONS, J. J., III	OK	Dem.	Apr. 27, 1982	Feb. 28, 1983
94.	GRADISON, Heather J.*	OH	Rep.	June 18, 1982	

* Commissioners who are still serving
[1] Recess appointment only, not confirmed

INTERSTATE COMMERCE COMMISSION



* In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rule-makings and significant adjudications are decided by the entire Commission.

APPENDIX B

Commission Workload

TABLE 1 —Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1983

Motor Matters

Case Type	*Openings*	*Closings*				
		Opposed	*Unopposed*	*Dismissed/ Rejected/ Withdrawn*	*Other*	*Total*
Rulemaking	14	19	0	0	3	22
Motor Carrier Licensing	13784	2108	11531	155	15	13809
Passenger Carrier Exit	20	7	0	1	3	11
Water Carrier Licensing	41	10	32	3	0	45
Freight Forwarder Licensing	148	15	121	5	0	141
Motor Carrier Complaints	21	11	0	2	1	14
Restriction Removal	272	5	234	65	0	304
Investigation & Suspension	5	9	0	2	0	11
Motor Rate[1]	497	218	0	9	7	234
Passenger Rate Review (State)	19	13	0	2	0	15
Motor Carrier Finance	489	74	274	57	7	412
Small Carrier Transfer	859	4	764	57	50	875
Motor Finance Temporary Authority	255	0	217	8	16	241
Totals	16424	2493	13173	366	102	16134

Rail Matters

Case Type	*Openings*	*Closings*				
		Opposed	*Unopposed*	*Dismissed/ Rejected/ Withdrawn*	*Other*	*Total*
Rulemaking	21	27	0	1	0	28
Abandonments (Non-Conrail)	146	33	68	7	3	111
Abandonments (Conrail)	64	0	11	15	0	26
Abandonment Exemptions	170	25	105	5	3	138
Securities	34	2	31	0	1	34
Other Finance[3]	104	38	69	15	7	129
Investigation & Suspension	6	3	0	1	1	5
Rate Complaint	50	25	0	253	1	279
Tariff Exemption[2]	658	641	17	2	4	664
Other Rate[4]	100	23	0	5	16	44
Totals	1353	817	301	304	36	1458

[1] 487 filings were for relief from tariff filing requirements (contract)

[2] 429 filings were petitions for exemption filed under EP 400 Sub 1

[3] Includes construction, trackage rights, licensing, etc

[4] Includes rate bureau agreements, petitions for declaratory order, intra-state rate review, etc

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1983

RULES AFFECTING THE BROAD RANGE OF TRANSPORTATION

(* indicates actions completed)

Ex Parte No. MC-1, et al.	Payment of Rates and Charges of Motor Carriers
Ex Parte No. 406*	Electronic Transmission of Freight Bills
RAILROADS	
No. 37517*	Reduction of the Notice Period for Filing Railroad Tariffs
Ex Parte No. 137	Contracts for Protective Service
Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)
Ex Parte No. 241 (Sub-No. 1)	Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practices
Ex Parte No. 263 (Sub-No. 3)*	Electronic Transmission of Loss and Damage Claims and Freight Bills
Ex Parte No. 274 (Sub-No. 8)	Exemption of Out of Service Rail Lines
Ex Parte No. 274 (Sub-No. 8A)	Exemption of Out of Service Rail Lines
Ex Parte No. 274 (Sub-No. 9)	Abandonment of Railroad Lines and Discontinuance of Service—Offers of Financial Assistance
Ex Parte No. 285	Maintenance of Records Pertaining to Demurrage, Detention, and Other Related Accessorial Charges by Rail Common Carriers of Property
Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Adjustment Procedures
Ex Parte No. 290 (Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment
Ex Parte No. 319	Investigation of Freight Rates for the Transportation of Recyclables and Recycled Materials
Ex Parte No. 322 (Sub-No. 1)*	Revised Procedures for Divisions of Revenue Cases
Ex Parte No. 328	Investigation of Tank Car Allowance System
Ex Parte No. 334	Car Service Compensation—Basic Per Diem Charges
Ex Parte No. 334 (Sub-No. 5)	Zone of Reasonableness for Car Hire Charges
Ex Parte No. 346 (Sub-No. 3)*	Rail General Exemption Authority—Long and Short Haul Transportation
Ex Parte No. 346 (Sub-No. 7)*	Rail Exemption—Export Coal
Ex Parte No. 346 (Sub-No. 8)	Exemption from Regulation—Box Car Traffic
Ex Parte No. 346 (Sub-No. 9A)*	Liquid Iron Chloride
Ex Parte No. 346 (Sub-No. 12)*	Petition to Exempt Storage Leases of Norfolk and Western 1982
Ex Parte No. 346 (Sub-No. 13)*	Soo Line Railroad Company Petition for Exemption from the Provisions of 49 U.S.C. 10726—Long and Short Haul Transportation

RAILROADS—Continued

Ex Parte No. 346 (Sub-No. 14)	Rail General Exemption Authority—Miscellaneous Agricultural Commodities
Ex Parte No. 346 (Sub-No. 15)	Exemption from Regulation—Rail Transportation of Frozen Foods
Ex Parte No. 346 (Sub-No. 16)*	Iron Sulphate Exemption
Ex Parte No. 346 (Sub-No. 18)	Exemption from Regulation—Poultry, Meat, and Dairy Products
Ex Parte No. 347 (Sub-No. 1)	Coal Rates Guidelines—Nationwide
Ex Parte No. 387*	Rail Transportation Contracts
Ex Parte No. 387 (Sub-No. 200)*	Contract Implementation Date
Ex Parte No. 388	State Intrastate Rail Rate Authority
Ex Parte No. 392*	Application Procedures—Construction, Acquisition or Operation of Railroad Lines
[illegible]	Cost Ratio for Recyclables—1980 Determination
[illegible]	Cost Ratio for Recyclables—1983 Determination
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

TRUCK AND BUS [illegible]

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1983—Continued

TRUCK AND BUS COMPANIES—Continued	
Ex Parte No. 55 (Sub-No. 57)	Exemption of Certain Transactions under 49 U.S.C. 11343
Ex Parte No. 111 (Sub-No. 1)	Transfer of Operating Rights
Ex Parte No. 297	Rate Bureau Investigation (Shipper-Affiliation)
Ex Parte No. 297 (Sub-No. 5)	Motor Carrier Rate Bureaus—Implementation of P.L. 96-296
Ex Parte No. 297 (Sub-No. 6)*	Bus Rate Bureau Procedures
Ex Parte No. 311 (Sub-No. 4)	Modification of Motor Carrier Fuel Surcharge Program
Ex Parte No. 354	Additional Charges of Motor Carriers and Freight Forwarders
Ex Parte No. 400 (Sub-No. 1)*	Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343
Ex Parte No. 422*	Removal of Extraordinary (Financial) Conditions and 49 U.S.C. 11348 Jurisdiction
Ex Parte No. 429*	Elimination and Modification of Certain Securities Regulations
Ex Parte No. 430*	Elimination of the Finance Board and Transfer of its Remaining Funtion to the Review Boards
Ex Parte No. 432*	Reorganization of Rail and Motor Carriers
Ex Parte No. 438	Acquisition of Motor Carriers by Railroads
Ex Parte No. MC-5 (Sub-No. 4)	Passenger Broker Surety Bonds or Insurance
Ex Parte No. MC-42	Handling of C.O.D. Shipments
Ex Parte No. MC-43 (Sub-No. 7A)*	Lease and Interchange of Vehicles (Leases Involving Carrier Agents)
Ex Parte No. MC-43 (Sub-No. 10)	Payment of Detention Charges
Ex Parte No. MC-43 (Sub-No. 12)*	Private Carrier Leasing
Ex Parte No. MC-43 (Sub-No. 14)	Lease and Interchange Regulations (Master Leases)
Ex Parte No. MC-43 (Sub-No. 15)*	Elimination of Thirty Day Leasing Requirement
Ex Parte No. MC-43 (Sub-No. 16)	Lease and Interchange Regulations (Identification Devices)
Ex Parte No. MC-58 (Sub-No. 1)	Rules Governing the Designation of Process Agents by Motor Carriers and Brokers
Ex Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures
Ex Parte No. MC-65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway and Deviation Rules
Ex Parte No. MC-67 (Sub-No. 6)*	Elimination of Notification of Emergency Temporary Authority Applications

TRUCK AND BUS COMPANIES—Continued

Ex Parte No. MC-67 (Sub-No. 8)*	Rules Governing Temporary Authority and Emergency Temporary Authority Applications
Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries
Ex Parte No. MC-77 (Sub-No. 3)*	Elimination of Certificates as a Measure of "Holding Out"
Ex Parte No. MC-82	Provisions for Foreseeable Future Costs and Requirements for Additional Data
Ex Parte No. MC-82 (Sub-No. 1)	Provisions for Foreseeable Costs
Ex Parte No. MC-82 (Sub-No. 4)	New Provisions in Motor Carrier Revenue Proceedings
Ex Parte No. MC-95 (Sub-No. 1)	Practices of Motor Common Carriers of Passengers—Checked Baggage Prohibitions and Liability Exemptions
Ex Parte No. MC-95 (Sub-No. 3)	Regulations governing the Adequacy of Intercity Motor Common Carrier Passenger Service
Ex Parte No. MC-97 (Sub-No. 2)	Investigation into Practices of Motor Common Carriers of Property on Residential and Redelivered Shipments
Ex Parte No. MC-98 (Sub-No. 1)*	Investigation of Motor Carrier Classification System
Ex Parte No. MC-122 (Sub-No. 2)*	Lease of Equipment and Drivers to Private Carriers
Ex Parte No. MC-122 (Sub-No. 4)	Intercorporate Hauling—Interpretation
Ex Parte No. MC-125*	Fare Flexibility for the Bus Industry
Ex Parte No. MC-128	Revenue Need Standards in Motor Carrier Increase Proceedings
Ex Parte No. MC-129	1977-78 Platform Study of Classes I and II Motor Common Carriers
Ex Parte No. MC-142 (Sub-No. 1)	Removal of Restrictions from Authority of Motor Carriers of Property
Ex Parte No. MC-142 (Sub-No. 2)*	Freight Forwarder Restrictions
Ex Parte No. MC-142 (Sub-No. 3)*	Removal of Restrictions from Authorities of Motor Carriers of Passengers-Intermediate Points
Ex Parte No. MC-145*	Cancellation of Motor Carrier Joint Rates and Through Rates
Ex Parte No. MC-147	Information Required on Receipts and Bills
Ex Parte No. MC-156*	Applications for Motor Carrier Operating Authority by Railroads and Railroad Affiliates
Ex Parte No. MC-157*	Investigation into Canadian Law and Policy Regarding Applications of American Motor Carriers for Canadian Operating Authority
Ex Parte No. MC-158	Rates For a Named Shipper or Receiver
Ex Parte No. MC-160*	Procedures for Review of Intrastate Bus Rates
Ex Parte No. MC-161*	Preemption of State Regulation of Regular Route Exit-Motor Passenger Carriers

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1983—Continued

TRUCK AND BUS COMPANIES—Continued	
Ex Parte No. MC-[illegible]*	Procedures for Complaints Against Bus Fares
Ex Parte No. MC-163*	Procedures for Providing Notice of Specified Applications Through an I.C.C. Register in Lieu of Federal Register Notice
Ex Parte No. MC-165*	Exemption of Contract Carriers from Tariff Filing
Ex Parte No. MC-165 (Sub-No. 1)*	Motor Contract Carriers of Property—Proposal to Allow Issuance of Permits Authorizing Industry-wide Service
Ex Parte No. MC-166	Expansion of Zone of Reasonableness for Motor Common Carriers of Property and Freight Forwarders
Ex Parte No. MC-170*	Short Notice Effectiveness for Motor Carrier and Freight Forwarder Rates
Ex Parte No. MC-171	Bus Schedule Changes—Alabama Public Service Commission
Ex Parte No. MC-172	Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments

TABLE 3.—Listing of formal significant cases, September 30, 1983

MOTOR SECTION

Number	Title/Description	Statutory Deadline
Ex Parte No. 55 (Sub-No. 43A) and Ex Parte No. MC-142 (Sub-No. [illegible])	Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property) Removal of Restrictions from Authorities of Motor Carriers of Property	None
Ex Parte No. MC-[illegible] (Sub-No. [illegible]A)	Special Temporary Authority Procedures	None
Ex Parte No. MC-[illegible] (Sub-No. [illegible])	Petition to Expand Passenger Motor Carrier Superhighway & Deviation Rules	None
[illegible]	[illegible] ETA Applications	None
[illegible]	[illegible]	None
[illegible]	[illegible]	None
[illegible]	[illegible]	None
[illegible]	[illegible] Adequacy [illegible] Service	None

MOTOR SECTION

	Number	Title/Description	Statutory Deadline
9	Ex Parte No MC-43 (Sub-No 12)	Leasing Rules Modification	None
10	Ex Parte No MC-43 (Sub-No 15)	Thirty Day Leasing Requirement	None
11	Ex Parte No MC-170 [was Ex Parte No 297 (Sub-No 5)]	Short Notice Effectiveness for Independently Filed Motor Carrier and Freight Forwarder Rules	None
12	Ex Parte No 55 (Sub-No 57)	Exemption of Transactions Under 49 U.S.C § 11343 Involving Certain Motor Carriers of Property	None
13	Ex Parte No MC-165 (Sub-No 1)	Motor Contract Carriers of Property—Proposal to Allow Issuance of Permits Authorizing Industry-Wide Service	None
14	Ex Parte No MC-166	Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980	None
15	Ex Parte No MC-169	Expansion of Zone Reasonableness for Motor Common Carriers of Property and Fright Forwarders [49 CFR 1309, 1310]	None

RAIL SECTION

	Number	Title/Description	Statutory Deadline
1	Ex Parte No 73 and MC-1	Regulations for Payment of Rates and Charges	None
2	Ex Parte No MC-158	Rates for a Named Shipper or Receiver	None
3	Ex Parte No 230 (Sub-No 6)	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)	None
4	Ex Parte No 274 (Sub-No 5)	Revision of Abandonment Regulations	None
5	Ex Parte No 274 (Sub-No 9)	Abandonment of Railroad Lines and Discontinuance of Service—Offers of Financial Assistance	None
6	Ex Parte No 274 (Sub-No 10)	Environmental Notices in Abandonment and Rail Exemption Proceedings	None
7	Ex Parte No 282 (Sub-No 4a)	Forced Sale Procedures for Bankrupt Railroad Lines	None
8	Ex Parte No 282 (Sub-No 9)	Railroad Consolidation Procedures—Trackage Rights Exemption	None
9	Ex Parte No 334	Car Service Compensation—Basic Per Diem Charges—Formula Revision In Accordance with the Railroad Revitalization and Regulatory Reform Act of 1976	None

TABLE 3.—Listing of formal significant cases, September 30, 1983—Continued

RAIL SECTION

	Number	Title/Description	Statutory Deadline
10	Ex Parte No. 334 (Sub-No. 5)	Zone of Reasonableness for Car Hire Charges	None
11	Ex Parte No. 346 (Sub-No. 15)	Exemption from Regulation—Rail Transportation Frozen Food	
12	Ex Parte No. 394 (Sub-No. 1)	Cost Ratio for Recyclables—1983 Determination	8/28/86
13	Ex Parte No. 438	Acquisition of Motor Carriers by Railroads	—
14	Ex Parte No. 446	Alaska Railroad Certification	None
15	Ex Parte No. 447	Petition for Delay of Direct Connector Requirement to Joint Rail Rates in General Increase (49 U.S.C. 10706)	10/11/83
16	Ex Parte No. 448	Consolidated Rail Corporation—Petition for Extension of 49 U.S.C. 10705a(a)	9/30/83
17	F.D. No. 28640 (Sub-No. 1)	Grand Trunk Corporation—Control—Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Amended Plan of Reorganization	3/30/84
18	No. 38772	Unit Train Rate on Coal, Thunder Junction Wyoming to Mill, TX	None
19	S5R2, S5R3, S5R6	Western, Eastern and Southern Rate Bureau Agreements	None

OTHER BUREAUS AND OFFICES

	Number	Title/Description	Statutory Deadline
1	Ex Parte No. 417 and 417 (Sub-No. 1)(Consolidated)	Costing Methodologies for the Northeast Corridor (consideration of Amtrak petition to reopen processing)	None
2	Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Recovery Procedures—Proposed All Inclusive Index	None
3	Ex Parte No. 290 (Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment	None
5	Ex Parte No. 334	Car Service Compensation—Basic Per Diem Charges	None
6	Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines—Nationwide	None
7	Ex Parte No. 393 (Sub-No. 1)	Standards for Railroad Revenue Adequacy	None
8	Ex Parte No. 394 (Sub-No. 1)	Cost Ratio for Recyclables	None
9	Ex Parte No. 399	Cost Recovery Percentage	9/30/83

OTHER BUREAUS AND OFFICES

	Number	Title/Description	Statutory Deadline
10	Ex Parte No. 431	Adoption of the Uniform Railroad Costing System	None
11	Ex Parte No. 436	Railroad Cost of Capital — 1982	None
12	Ex Parte No. [illegible]	Railroad Revenue Adequacy	None
13	Ex Parte No. 444	Electronic Filing of Tariffs	None
14	No. 37130 (Sub-No. 2)	Special Docket Proceedings — Exemption from Letter of Intent Requirements Involving Amounts of $2,500 or less	None
15	No. 37321	Revision of Tariff Regulations — All Carriers	None
16	Ex Parte No. MC-5 (Sub-No. 1)	Draft final rules submitted to Chairman 8/31/83. Commission decided 9/16/83	None
17	Ex Parte No. MC-5 (Sub-No. 2) and Ex Parte No. 159 (Sub-No. 1)	Draft final rules scheduled for circulation to Commission 9/20/83	None
18	Ex Parte No. MC-5 (Sub-No. 3) and Ex Parte No. 159 (Sub-No. 2)	Draft final rules to be circulated within two weeks.	None
19	Ex Parte No. MC-19 (Sub-No. 36A)	Awaiting results of a special study being conducted by field staff	NA

TABLE 4.—Informal proceedings

	Fiscal Year 1981	Fiscal Year 1982	Fiscal Year 1983
Applications for motor temporary authority			
Filed	14053	6032	4623
Disposed of	15051	6452	4711
Pending at end of year	732	402	314
Petitions in applications for motor carrier temporary authority			
Filed	974	709	311
Disposed of	9[illegible]	729	402
Pending at end of year	155	135	44
Applications to deviate from regular routes			
Filed	18	8	2
Disposed of	15	5	5
Pending at end of year	3	3	0

TABLE 5.—Certificates issued for abandonment, construction, acquisition and operation of rail lines (these figures reflect abandonment applications filed by bankrupt carriers and Conrail for Fiscal Years 1982 and 1983 under NERSA)

		Fiscal Year 1981		Fiscal year 1982		Fiscal Year 1983	
		Applications	Miles	Applications	Miles	Applications	Miles
I	Abandonment applications filed	161**	3219.41	382***	4820.84	178****	3702
	Certificate of abandonment						
	Granted	81	1342.19	381	5150.91	123	2454
	Denied	1	12.20	3	52.26	2	28
	Dismissed	11	24.60	39	695.91	7	91
	Abandonment mileage permitted since effective date of the Act		80238.59		85389.50		88139.08
II	Construction applications filed	13	94.60	2	64.5	1	89
	Granted	1	82	6	46.64	0	—
	Denied	0	—	0	—	0	—
	Dismissed	0	—	0	—	2	64.5
III	Acquisition and operation applications filed	26	497.86	3	108.32	0	
	Granted	11	9.46	1	41.7	0	43.9
	Denied	0	—	1	61.1	1	
	Dismissed	2	50.53	0	—	1	3.2

* 5 of the 11 abandonments (5,122 miles) in the category were filed by the Milwaukee Road. The Milwaukee Road Restructuring Act transferred from the Commission to the bankruptcy court final authority over the abandonment, sale and transfer of the lines of presently bankrupt railroads.

** Includes 41 Conrail filings. Under NERSA the Commission must grant any application filed by Conrail within 90 days unless an offer of final assistance is filed.

*** 292 were Conrail filings.

**** 46 Conrail filings for 367 miles. 15 granted—119 miles. 15 dismissed (45 miles)—sale. 8 bankrupt carriers for 173 miles recommended.

TABLE 6.—Tariff schedules, fiscal year 1983

	Received	Criticized	Rejected
Freight			
Common Carrier Tariffs			
Rail	76,125	115	131
Motor	980,098	2,462	4,418
Water	21,508	6	17
Freight Forwarders	20,105	1	9
International Ocean-Land Intermodal	111,981	8	3
Total	1,209,817	2,592	4,578
Contract Carrier Schedules			
Motor	76,010	48	71
Passenger tariffs			
Rail	48	0	1
Motor	5,739	8	33
Water	20	0	0
Total Passenger	5,807	8	34
Grand Total	1,291,634	2,648	4,683

SPECIAL PERMISSION APPLICATIONS

Received	Granted	Denied	Grant/Denied in Part	Withdrawn
14,355	4,715	187	9,068	385

TABLE 7.—Action taken on applications filed under provisions of 49 U.S.C. 10726 (formerly section 4 of the ICA), fiscal year 1983

Applications		Applications	
On hand beginning of year	1	Disposed of during year:	
		Granted	12
		Denied	0
Received during year	11	Withdrawn	0
		Dismissed	0
Total	12	**Total**	12
		Pending at end of year	0

Note: Petitions for reconsideration of Board's action—0; applications processed against granting of relief—0; relief withheld pending hearings in applications—0.

TABLE 8.—Released rates board

	Number	Petitions for Admin. Review
FY 1983		
Applications		
On hand beginning of year	0	0
Received during the year	5	1
Total	5	1
Disposed of During the Year		
Granted	3	1
Denied	0	0
Closed	1	0
Withdrawn	0	0
Total	4	1
Pending at End of Year	1	1

TABLE 9.—Action taken on proposals (protested and non-protested) considered for suspension and/or investigation

Suspensions—Fiscal Year 1983

	Rail	Motor	Water	Fght. Fwdr.	Total No.	Percent
Suspended in full	4	5	0	0	9	5.0
Suspended in part	2	0	0	0	2	2.0
*Not Suspended or Investigated	67	58	2	0	127	65.0
*Not Suspended but Investigated	2	0	0	0	2	2.0
#Otherwise disposed of	16	29	3	0	48	26.0
	91	92	5	0	188	100.0

*—Permitted to become effective

#—Schedules cancelled or rejected, protests withdrawn or filed too late

TABLE 10.—Informal rate cases branch (Bureau of Traffic—FY 1983)

Rate Cases General:	
On hand beginning of year	47
Received during year	6237
Disposed of during year	6175
Pending at end of year	107
Informal Complaints:	
On hand beginning of year	66
Received during year	91
Disposed of during year	105
Pending at end of year	52
Decisions—Statement of Claimed Damages (49 CFR 1133.2):	
On hand beginning of year	0
Received during year	4
Disposed of during year	2
Pending at end of year	2
Special Dockets Board:	
On hand beginning of year	242
Received during year	721
Disposed of during year	773
Pending at end of year	190

TABLE 11.—ICC unit of the National Defense Executive Reserve

NDER Group	Fiscal Year 1981 On Roll	Fiscal Year 1982 On Roll	Fiscal Year 1983 On Roll
Rail	467	483	483
Motor	128	139	139
Water	33	33	33

TABLE 12.—Car supply—Cars installed, retired, and ordered, class I railroads

	Fiscal Year			
	1968	**1973**	**1978**	**1983**
Cars Installed:				
Box	22,188	14,128	7,203	612
Refrigerator	3,822	2,749	15	0
Gondola	9,833	4,384	2,492	281
Hopper	17,737	3,353	11,421	1,519
Covered Hopper	7,999	7,685	4,987	262
Flat	2,992	1,221	1,967	338
Other	1,291	602	40	0
Total Cars	65,862	34,122	28,125	3,012
Cars Retired:				
Box	39,944	29,397	36,307	12,202
Refrigerator	5,785	3,407	2,841	2,002
Gondola	14,052	2,906	9,302	6,960
Hopper	27,539	19,222	18,159	13,027
Covered Hopper	788	1,165	2,304	4,870
Flat	1,745	* – 337	1,306	3,641
Other	4,077	6,222	2,539	1,145
Total Cars	93,930	61,982	72,758	43,847
Cars Ordered:				
Box	8,841	19,373	8,629	150
Refrigerator	4,360	4,085	192	0
Gondola	7,750	3,472	2,054	281
Hopper	12,139	5,782	16,224	995
Covered Hopper	6,557	25,286	7,183	321
Flat	6,987	10,319	1,110	360
Other	8,555	10,652	# – 160	0
Total Cars	55,189	78,969	35,232	2,107

* Negative retirement indicates increase in ownership in excess of new installations resulting from reclassification or transfer of equipment, purchase or lease of used equipment, etc.

Order figures include net after cancellations. Orders for 160 "[illegible]er" cars cancelled during October 1977.

TABLE 13.—Ownership, serviceable ownership, and turnaround time, class I railroads

	Fiscal Year			
	1968	**1973**	**1978**	**1983**
Ownership:				
Plain Box	415,150	327,853	223,705	130,217
Equipped Box	143,454	179,069	166,080	145,582
Total Box	558,604	506,922	389,785	275,799
Refrigerator	101,384	91,939	69,367	54,441
Gondola	200,454	183,236	158,150	130,400
Hopper	415,500	363,256	326,862	286,121
Covered Hopper	122,210	145,629	161,758	164,655
Flat	67,580	96,916	97,119	84,440
Other	57,148	39,300	29,448	22,315
Total Cars	1,522,880	1,427,198	1,232,489	1,018,171
Serviceable Cars:				
Plain Box	384,120	300,575	193,015	110,768
Equipped Box	137,397	168,580	146,174	120,502
Total Box	521,517	469,155	339,189	231,270
Refrigerator	98,269	87,512	69,971	48,295
Gondola	189,362	171,391	144,325	119,839
Hopper	397,806	345,427	306,538	268,007
Covered Hopper	118,593	140,043	152,140	151,453
Flat	64,453	92,391	90,413	78,706
Other	54,270	37,723	27,763	20,432
Total Cars	1,444,270	1,343,642	1,130,339	918,002
	Calendar Year—Turnaround Time, Days			
	1967	**1972**	**1977**	**1982**
Box	22.13	23.21	28.26	44.5
Refrigerator	35.26	32.21	36.87	47.7
Gondola	19.61	19.41	22.81	24.7
Hopper	14.53	14.71	15.82	16.8
Covered Hopper	21.68	20.73	24.02	34.1
Flat	12.98	12.57	14.45	16.6
Average All Cars	19.02	19.57	22.18	26.9

TABLE 14.—Extension of time limits—Rail proceedings, fiscal year 1983

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. 38799 *Light Density Surcharge Burnswick, MO—Omaha, NE, Line, N&W*	Investigation	July 28, 1982	Ninety day extension necessary because of complex legal and costing issues
No. 37583, *Mobil Chemical Company v. Seaboard Coast Line Railroad Company*	Investigation	October 7, 1982	Ninety day extension necessary because of complex jurisdiction and costing issues
No. 38792, *Switching Charges For Privately Owned Cars Billed To Repair Facilities*	Investigation	July 21, 1982	Ninety day extension necessary because parties need additional time to prepare their pleadings
No. 39038, *The Aluminum Association Inc., et al. v. Alton & Southern Railway Company, et al*	Complaint	September 23, 1983	Sixty day extension necessary for submission of statements of facts and argument
No. 39002, *Utility Fuels, Inc. v. Burlington Northern Railroad Company, Fort Worth and Denver Railway Company, and Atchison, Topeka and Santa Fe Railway Company*	Complaint	September 2, 1983	Thirteen day extension to permit reply filing
No. 38262S, *Eli Lilly and Company v. Burlington Northern Railroad Company, et al*	Complaint	N/A	Ninety days extension necessary to permit submission of evidence as to the second stage of the bifurcated approach
No. 38168S, *Westinghouse Electric Corporation v. The Alton and Southern Railway Company, et al*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence
No. 38181S, *Consumers Power Company v. The Chesapeak and Ohio Railway Company, et al*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 37872S, *Potomac Electric Power Company v. The Baltimore and Ohio Railroad Company, et al*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 37854S, *Consumer Power Company v. Norfolk and Western Railway Company*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 37834S, *Ethyl Corporation v. Illinois Central Gulf Railroad et al*	Complaint	N/A	Sixty day extension necessary for completion of evidence and filed reply
No. 38799 *Light Density Surcharge Brunswick, MO-Omaha, NE, Line, N&W*	Investigation	July 28, 1982	Ninety day extension necessary because of complex legal and costing issues
No. 37583, *Mobil Chemical Company v. Seaboard Coast Line Railroad Company*	Investigation	October 7, 1982	Ninety day extension necessary because of complex jurisdiction and costing issues

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. [illegible], *Switching Charges For Privately Owned Cars [illegible] Repair Facilities*	Investigation	July [illegible], 1982	Ninety day extension necessary because parties need additional time to prepare their pleadings.
No. [illegible], *The Aluminum Association, Inc., et al. v. Alton & Southern Railway Company, et al.*	Complaint	September 2[illegible], 1983	Sixty day extension necessary for submission of statements of facts and argument.
No. [illegible], *Utility Fuels, Inc. v. Burlington Northern Railroad Company, Fort Worth and Denver Railway Company, and Atchison, Topeka and Santa Fe Railway Company*	Complaint	September [illegible], 1983	Thirteen day extension to permit reply filing.
No. 38262S, *Eli Lilly and Company v. Burlington Northern Railroad Company, et al.*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence as to the second stage of the bifurcated approach.
No. 38188S, *Westinghouse Electric Corporation v. The Alton and Southern Railway Company, et al.*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 38181S, *Consumers Power Company v. The Chesapeake and Ohio Railway Company, et al.*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 37872S, *Potomac Electric Power Company v. The Baltimore and Ohio Railroad Company, et al.*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 37854S, *Consumer Power Company v. Norfolk and Western Railway Company*	Complaint	N/A	Ninety day extension necessary to permit submission of evidence.
No. 37834S, *Ethyl Corporation v. Illinois Central Gulf Railroad, et al.*	Complaint	N/A	Sixty day extension necessary for completion of evidence and filing of reply.

TABLE 15.—Surcharges on joint rates filed under section 10705a, FY 1983

Railroad Group & Type of Surcharge	Surcharges	Negative Surcharges	Net Annual Revenue (000)
Conrail			
Commodity	5	—	10,600.8
Light density line*	1	—	7,567.4
Total	6	—	18,168.2
Class I Carriers Other Than Conrail			
Commodity	10	20	(597.9)
Light density line	2	—	524.1
Total	12	20	(73.8)
Class II Carriers			
Commodity	—	—	—
Light density line	1	—	5,988.0
Total	1	—	5,988.0
Class III Carriers			
Commodity	10	1	(1.0)
Light density line	14	—	80.0
Total	24	1	79.0
Total All Carriers	43	21	24,161.4

*Involves varying amounts of surcharges on line segments in six states

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. Additionally, the Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO stock number has been included. Price information may be obtained by writing to:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
Telephone: 202-783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Bureau of Accounts (AC)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Public Affairs (PA)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of the Secretary (SE)
  Publications Room (Rm. B-221)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Transportation Analysis (OTA)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Small Business Assistance Office (SBAO)
  Interstate Commerce Commission
  Washington, D.C. 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Bureau of Accounts' Public Reference Room, Room 3378, from 8:30 a.m. to 5:00 p.m. weekdays. Photocopies of these reports, at a cost of 25 cents per page, with a $2.50 minimum charge per order, can be obtained by writing to the Office of the Secretary, Room 2215, ICC, Washington, D.C. 20423.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to 90 days from the date of service from TS Infosystems, Inc., Room 2227, ICC, Washington, D.C. 20423, or by calling (toll-free) 800-424-5403 or 202-289-4357. Printed reports are also available from the Publications Room until the supply is exhausted.

The Secretary's Office makes available a daily recorded listing of significant Commission decisions. This information may be obtained by calling (toll-free) 800-424-5230 or 202-275-0895.

CONSUMER PUBLICATIONS

OCP-100 Household Goods Information—OCCA

This booklet explains consumer rights when moving household goods across state lines. Summary information from performance reports filed with the ICC by the 20 largest moving companies and a summary of consumer complaints received by the Commission about those companies is also included.

Public Advisories

7 Owner Operator—Rights, Responsibilities and Remedies—SBAO

8 Lease—Purchase Plans—SBAO

Weekly Digest—PA

A comprehensive review of significant ICC actions of particular interest to the consumer. Copies can be obtained on a regular basis by writing the Office of Public Affairs, ICC, Washington, D.C. 20423. Telephone 202-275-7252.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress

90th 1976 (026-000-01041-1)*
91st 1977 (026-000-01096-9)*
92nd 1978 (026-000-01135-3)*
93rd 1979 (026-000-01176-1)*
94th 1980 (026-000-01195-7)*
95th 1981 (026-000-01225-2)*
96th 1982*

Code of Federal Regulations, Title 49, Revised to October 1983

Parts 1000-1199 General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures (022-003-94228-9)*

Parts 1200-1299 Uniform system of accounts destruction of reports, valuation (022-033-94229-7)*

Parts 1300-End Passenger freight tariffs and schedules, credit regulations (022-033-94230-1)*

Interstate Commerce Act

Available from the Government Printing Office in U.S. Code, 49 U.S.C. Sec. 10101 et seq.*

ICC Register

A daily summary of motor carrier applications and of decisions and notices issued by the ICC. Subscription information is available from the *ICC Register* Subscription Manager, Office of the Secretary, Room 2108, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7591.

INFORMATIONAL PUBLICATIONS

Can They Do That? Administrative Ruling No. 119—OCCA

Department of Transportation and State Regulations—Bulletin No. 9—SBAO

Filing Your Tariff or Schedule—Bulletin No. 8—SBAO

Government Traffic—Bulletin No. 3—SBAO

Guide to Applying for Permanent Operating Authority: Passengers—SBAO (December 1982)

Guide to Applying for Permanent Operating Authority: Property—SBAO (October 1982)

Guide to Filing Protests, Replies and Appeals—Bulletin No. 6—SBAO

Highlights of the Bus Regulatory Reform Act of 1982—Bulletin No. 2—SBAO

Highlights of the Motor Carrier Act of 1980—Bulletin No. 1—SBAO

Illegal Lumping—OCCA

Addresses illegal "lumper" practices.

Loss and Damage Claims! Can You Collect?—OCCA

Owner Operator Food Transportation—Bulletin No. 4—SBAO

Restrictions Removal Procedures—Bulletin No. 5 –SBAO

Sample Caption Summaries—Bulletin No. 7—SBAO

Self-Help Against Unauthorized Operations—OCCA

Speeches and Statements—PA

ICC Commissioners' speeches or statements before congressional committees may be obtained on an individual basis from the Office of Public Affairs, Room 1211, ICC, Washington, D.C. 20423. Telephone 202-275-7252.

State Regulatory Commissions and Fuel Tax Divisions—Bulletin No. 10—SBAO

PERSONNEL

Career Opportunities with the ICC

Opportunity in the Legal Profession with the ICC

These publications, and other information on working for the ICC, may be obtained by writing the Office of Personnel, Room 1136, ICC, Washington, D.C. 20423.

SPECIALIZED PUBLICATIONS

Motor

An Analysis of Rates and Costs in the Motor Carrier Industry—OTA (April 1980)

Case Studies of Small Community General Freight Service—OTA (Semi-monthly)

Cost of Transporting Freight, by Class I and Class II Motor Common Carriers of General Commodities, 1979—AC

Consequences of Motor Carrier Deregulation on Fuel Efficiency—OTA

Thomas Corsi, Asst. Prof., University of Maryland, Merrill Roberts, Prof., University of Maryland (September 28, 1979)

The Effects of Recession on the Motor Carrier Industry—OTA (June 1981)

The Effect of Regulatory Reform on the Trucking Industry: Structure, Conduct and Performance-Preliminary Report—OTA (June 1981)

Empty/Loaded Truck Miles on Interstate Highways During 1976—OTA (April 1977)

An Evaluation of Charges that Regulatory Reform Will Degrade Small Community Motor Carrier Service—OTA (March 1980)

Financial and Economic Rate Analysis of the Motor Carrier Industry Volume II—R. L. Banks & Associates, Inc., October 2, 1979—OTA

Highlights of Recent Activity in the Motor Carrier Industry—OTA (December 4, 1980)

Highway Form B—AC

Information for single-line and interline shipments. Statement No. 2E1-82

Some Implications for Motor Carrier Regulatory Reform—OTA (April 1980)

The Independent Trucker: A Nationwide Survey of Owner-Operators—OTA (1978)

Independent Trucker: Follow-Up Survey of Owner-Operators—OTA (November 1979)

Initial Carrier and Shipper Responses to Intrastate Trucking Deregulation in Florida—OTA (June 1980)

Initial Paper: Regulatory Reform for the General Commodity Segment of the Motor Carrier Industry—OTA (January 1980)

Initial Report of the Motor Carrier Task Force, May 1979—OTA

Report and recommendations of a staff task force on improving motor carrier regulation.

The ICC and Owner-Operators: The Fuel Surcharge Program—OTA (April 1982)

The ICC and Owner-Operators: Leasing Rules and Modifications—OTA (April 1982)

Minority Motor Carriers: Status and Prospects—OTA (March 1982)

Motor Carrier Computerized Costing Program—SE

Computerization of the manual method used for determining motor carrier cost for individual freight movements, Statement No. 2E4-79.

Motor Carrier Monitoring Program: Initial Notes from Carrier Contact and Sources—OTA (June 1981, November 1981, June 1982)

Motor Carrier Platform Study—SE

Determination of the minutes per hundredweight in handling freight across a motor carrier platform. Statement No. 2S1-79 (July 1979)

The New Region One Motor Carrier—A Descriptive Profile

Prepared by Region 1 Motor Carrier staff, Boston, MA (June 1981)

Owner-Operators and the Motor Carrier Act of 1980—OTA (February 1982)

Owner-Operators: Single Versus Multiple Unit Fleet Owners—OTA (June 1982)

Owner-Operator Turnover between 1977-1980—OTA (June 1982)

Potential Benefits of Increased Price Competition in the Motor Carrier Industry—OTA (September 1980)

Selected Statistics of Class II Motor Carriers of Property—SE (Calendar 1981)

Selected Statistics of Class III Motor Carriers of Property—SE (Calendar 1978) Final

Small Community Service Study, As Mandated by Section 28 of the Motor Carrier Act—OTA (September 1, 1982)

Transport Statistics in the U.S. Motor Carriers
(First Release, Part 2, 1982)*

Uniform State Regulations—Motor Carrier Act of 1980, Section 19, Report to Congress—OTA (December 1982)

Rail

Class I Line-Haul Railroads, Selected Earnings Data—SE (Quarterly)

Conrail Abandonment Brochure—OTA

Contract Advisory Service Summaries of Contracts Filed with the Commission—OTA (Quarterly)

Exempt Rail Transportation of Fresh Fruits and Vegetables: Initial Impact—OTA

Guidelines for Evaluating the Feasibility of Short Line Operations—OTA (August 1982)

The Prospect of Reorganizing the Milwaukee Road as a Viable Carrier—OTA

Railroad Abandonment Brochure—OTA

Railroad Transportation Contracts (ICC rules and procedures) Ex Parte No. 387—OTA (October 1982)

Regressions for Railroad Cost Analysis—OTA (August 1977, ECMS-6)

Report of Railroad Employment Class I Line-Haul Railroads—SE
Statement No. M-350 (Monthly)

A Study to Perform an In-Depth Analysis of Market Dominance and Its Relationship to Other Provisions of the 4-R Act—OTA

Transport Statistics in the U.S. Railroads
(First Release, 1982; Second Release, 1980 Final)

Wage Statistics of Class I Railroads in the U.S.—SE Statement No. A-300 (Calendar 1982)

General

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data: SE

- *Large Class I Motor Carriers of Property;*
- *Large Class I Motor Carriers of Passengers; and*
- *Large Class I Household Carriers*

Early Experience with Airline Deregulation—OTA (April 1980)

Financial Management Information Package—SE

Informs small transportation businesses, especially new trucking firms, on ways to deal more effectively with the business aspects of their operations (1981).

Report of the Bus Industry Study Group, Interstate Commerce Commission, October 1979—OTA

Transport Statistics in the U.S. Freight Forwarders (Calendar 1979) Final

Transport Statistics in the U.S. Private Car Lines (Calendar 1979) Final

Transport Statistics in the U.S. Water Carriers (Calendar 1979) Final

APPENDIX D

Appropriations and Employment

The following statement shows average full time employment and total appropriations for the Fiscal Years 1951 to 1983 for activities included under the current appropriation title "Salaries and Expenses."

Year	Appropriation	Average Employment	Year	Appropriation	Average Employment
1951	$11,408,200	2,072	1968	23,846,000	1,899
1952	11,264,035	1,890	1969	24,664,000	1,808
1953	11,003,500	1,849	1970	27,742,660	1,802
1954	11,284,000	1,838	1971	28,442,000	1,731
1955	11,679,655	1,859	1972	30,640,000	1,676
1956	12,896,000	1,902	1973	33,720,000	1,765
1957	14,879,696	2,090	1974	40,681,000	1,874
1958	17,412,375	2,238	1975	44,970,000	1,986
1959	18,747,800	2,268	1976	52,455,000	2,034
1960	19,650,000	2,344	TQ	12,290,000	2,113
1961	21,451,500	2,386	1977	60,786,000	2,084
1962	22,075,000	2,400	1978	65,575,000	2,040
1963	23,502,800	2,413	1979	70,400,000	2,040
1964	24,670,000	2,408	1980	79,063,000	1,946
1965	26,715,000	2,339	1981	82,400,000	1,852
1966	27,540,000	2,376	1982	70,150,000	1,540
1967	27,169,000	1,929	1983	65,600,000	1,319

Fiscal Year 1983 Appropriations

An Act (Public Law 97-369, approved December 18, 1982) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1983, and for other purposes including the following:

Salaries and Expenses: For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed $1,500 for official reception and representation expenses, $65,600,000, provided, that Joint Board members and cooperating state commissioners may use government transportation requests when traveling in connection with their official duties as such.

Directed Rail Service: None of the funds provided under this Act shall be available for the execution of programs the obligations for which can reasonably be expected to be in excess of $10,000,000 for directed rail service under 49 U.S.C. 11125 or any other legislation.

Status of Appropriations

Status of Fiscal Year 1983 appropriations as of September 30, 1983:

Salaries and expenses:	
Total Appropriations	$65,600,000
Total Obligations	62,770,407
Unobligated balance lapsing	2,829,593
Directed Rail Service:	
Unobligated balance available from prior appropriation	4,619,923
Total Obligations Payments to carriers	(2,300,000)
Unobligated balance available (end of year)	2,319,923

Receipts

Status of receipt accounts as of September 30, 1983:

Registration and filing fees	$5,848,000
Fines, penalties & forfeitures	629,000
Service charges for allotments of pay for savings account	2,000
Charges for administrative services	178,000
Recoveries from railroad loan guarantees	40,448,000
Miscellaneous recoveries and refunds	46,000
Withholding for military benefits	2,000
Total Receipts	$47,153,000

APPENDIX E

Carrier Financial and Statistical Data

Table 1.—Carriers reporting to the Commission

	Number
Carriers subject to Uniform Systems of Accounts and required to file annual and periodic reports as of December 31, 1983	
Railroads, class I[1]	33
Motor carriers, class I passenger[2]	66
Motor carriers, class I property[3]	1,139
Motor carriers, class II property[4]	1,631
Total	2,869
Carriers filing annual reports but not subject to prescribed Uniform Systems of Accounts as of December 31, 1983	
Holding companies (rail)	4
Carriers and organizations not subject to filing of annual reports as of December 31, 1983	
Railroads, class II	24
Railroads, class III	311
Railroad switching and terminal companies, class III	141
Railroad lessor companies	82
Stockyard companies	17
Carlines (companies which furnish cars for use on lines of railroads)	158
Holding companies (motor)	53
Motor carriers of passengers, other than class I	2,544
Classes I and II motor carriers of property relieved from reporting requirements of classes I or II	336
Class III motor carriers of property	24,411
Water Carriers	270
Maritime carriers	6
Freight forwarders	231
Rate bureaus and organizations	71
Coal slurry pipeline company	1
Protective service companies	6
Total	28,662
Grand Total	31,535

[1] Railroad companies having annual operating revenues of $50,000,000 or more.
[2] Motor carriers having annual operating revenues in excess of $3,000,000.
[3] Motor carriers having annual operating revenues in excess of $5,000,000.
[4] Motor carriers having annual operating revenues less than $5,000,000 but in excess of $1,000,000.

TABLE 2.—Recapitulation of preliminary 1982 operating revenues, net investment and taxes (dollars in thousands)

Kind of carrier	Number of Carriers Represented[1]	Operating Revenues	Net Investment	Income taxes on Ordinary Income[2]
Railroads—class I line haul	36	$27 352 867	$35 821 243	$326 917
Motor carriers of property—class I intercity	957	32 246 439	7 200 555	366 467
Motor carriers of passengers—class I intercity	45	1 414 018	655 374	−1 325
Total	1 038	61 013 324	43 677 172	692 059
		Percentage distribution		
Railroads—class I line haul	3.5	44.8	82.0	47.1
Motor carriers of property—class I intercity	92.2	52.9	16.5	52.9
Motor carriers of passengers—class I intercity	4.3	2.3	1.5	0
Total	100.0	100.0	100.0	100.0

[1] Carriers for which preliminary financial and statistical data were available.
[2] Federal income taxes and provisions for deferred taxes only for railroads; all other carriers include Federal and State income taxes and provisions for taxes.

TABLE 3.—Class I line-haul railroads shareholders' equity, long term debt and dividends (dollars in thousands)

Item	1980	1981	1982
1. [illegible]			
a. [illegible]	$4 [illegible]	$4 [illegible]	$4 569 407
b. [illegible]	[illegible]	[illegible]	7 386 046
[illegible]	[illegible]	[illegible]	9 821 090
c. [illegible]	[illegible]	21 [illegible]	21 776 543
2. [illegible]	[illegible]	[illegible]	12 237 998
3. [illegible]	[illegible]	34 [illegible]	34 014 541
4. Ratio [illegible]	39.98	[illegible]	35.98
5. Amount of dividends:			
a. Cash	$616 81[illegible]	$[illegible]	$[illegible] 569
b. Stock		[illegible]	[illegible]

[illegible]

TABLE 4.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands)

	Item	1980	1981	1982
1	Number of carriers represented	39	38	36
	CONDENSED INCOME STATEMENT			
2	Operating revenues			
	a. Freight	$26,200,348	$28,766,575	$25,482,144
	b. Passenger	438,400	534,227	571,047
	c. Total operating revenues	28,102,946	30,733,921	27,352,867
3	Total operating expenses	26,249,920	28,475,945	26,389,034
4	Railway tax accruals	2,023,308	2,271,280	2,228,171
5	Net railway operating income	1,312,398	1,336,240	717,514
6	Ordinary income	1,191,384	2,104,861	1,192,993
7	Extraordinary items—Net[1]	0	99,640	0
8	Net income	1,191,384	2,204,501	1,192,993
	NET INVESTMENT AND EQUITY			
9	Net investment in transportation property and equipment plus working capital	34,149,735	35,726,831	35,821,243
10	Shareholders' equity	19,859,954	21,725,119	21,776,543
	FINANCIAL RATIOS (PERCENT)			
11	Operating ratio (L. 3 ÷ L. 2c)	93.41	92.65	96.48
12	Return on net investment (L. 5 ÷ L. 9)	3.85	3.74	2.00
13	Return on equity			
	a. Ordinary income basis (L. 6 ÷ L. 10)	6.00	9.69	5.48
	b. Net income basis (L. 8 ÷ L. 10)	6.00	10.15	5.48
	EMPLOYEE DATA			
14	Average number	458,996	436,397	378,906
15	Compensation			
	a. Total	$11,318,453	$11,650,806	$11,021,403
	b. Per hour paid for	10.214	11.131	12.260

[1] Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 5.—Class I line-haul railroads current assets and current liabilities as of December 31, 1981 and 1982 (dollars in thousands)

Item	1981 Amount	Percent of Change	1982 Amount	Percent of Change
Total current assets	$9,679,830	+ 11.6	$8,852,768	− 8.5
Cash and temporary cash investments	2,720,249	+ 54.4	2,835,596	+ 4.2
Materials and supplies	1,698,999	− 3.8	1,490,677	− 12.3
Total current liabilities	7,996,670	+ 2.8	7,489,391	− 6.4
Net working capital				
Including materials and supplies	1,683,160	+ 87.6	1,366,377	− 18.8
Excluding materials and supplies	− 15,839	—	− 124,300	—
Ratios				
Current assets to current liabilities				
Including materials and supplies	1.21		1.18	
Excluding materials and supplies	1.00		.98	
Cash and temporary cash investments to current liabilities	.34		.38	

TABLE 6.—Class I intercity motor carriers of property condensed income statement, financial ratios, and employee data (dollars in thousands)

	Item	*1980*	*1981*	*1982*[1]
1	Number of carriers represented	835	741	957
	CONDENSED INCOME STATEMENT			
2	Operating revenues			
	a Freight-intercity-common carrier	$26,690,601	$28,855,955	$27,996,947
	b Freight-intercity-contract carrier	1,139,261	1,052,023	1,500,357
	c Freight-local cartage	340,034	305,288	306,835
	d Intercity transportation for other motor carriers	186,946	165,109	210,421
	e Other operating revenue	1,981,441	2,144,544	2,231,879
	f Total operating revenues	30,338,283	32,522,919	32,246,439
3	Operating expenses	29,012,030	31,234,555	31,336,901
4	Lease of distinct operating unit—net	- 558	2,186	1,285
5	Net carrier operating income	1,325,695	1,290,550	910,823
6	Other income and miscellaneous deductions from income—net	- 277,036	- 185,612	- 172,916
7	Income taxes on ordinary income[2]	407,065	476,912	366,467
8	Ordinary income	641,594	628,026	371,440
9	Extraordinary items—net[3]	- 588,265	235,380	20,475
10	Net income	53,329	863,406	391,915
	NET INVESTMENT AND EQUITY			
11	Net investment in carrier operating property and equipment plus working capital	6,862,267	6,810,360	7,200,555
12	Shareholders' and proprietors' equity	4,606,807	5,003,760	5,374,951
	FINANCIAL RATIOS (PERCENT)			
13	Operating ratio (L 3 ÷ L 2f)	95.63	96.04	97.18
14	Return on net investment (L 5 ÷ L 11)	19.32	18.95	12.65
15	Return on equity (L 10 ÷ L 12)	1.16	17.26	7.29
	EMPLOYEE DATA			
16	Average number	471,458	501,938	484,607
17	Compensation	$11,459,475	$12,558,620	$12,333,825

[1] Preliminary.

[2] Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code; also does not include income taxes on extraordinary items. Includes provision for deferred taxes.

[3] Includes income taxes on extraordinary items and discontinued operations and accounting changes. For 1980, approximately $520 million loss is attributed to the write-off of interstate motor carrier operating rights made as a result of passage of The Motor Carrier Act of 1980. Increase in 1981 figures represent the tax effect of the prior year write-off interstate motor carrier operating rights.

TABLE 7.—Class I intercity motor carriers of passengers condensed income statement, financial ratios, and employee data (dollars in thousands)

	Item	*1980*	*1981*	*1982*[1]
1	Number of carriers represented	48	45	45
	CONDENSED INCOME STATEMENT			
2	Operating revenues			
	a Passenger intercity schedules	$941,290	$993,125	$961,198
	b Local and suburban schedules	10,075	6,498	5,249
	c Charter or special service	199,704	192,144	199,686
	d Other operating revenue	246,309	257,122	247,885
	e Total operating revenues	1,397,378	1,448,889	1,414,018
3	Operating expenses	1,318,372	1,376,766	1,386,200
4	Lease of carrier property—net	177	9	188
5	Net carrier operating income	79,183	72,132	28,006
6	Other income and miscellaneous deductions—net	27,532	16,322	6,680
7	Income taxes on ordinary income	25,111	24,178	-1,325
8	Ordinary income	81,604	64,276	36,011
9	Extraordinary items—net[2]	7,457	2,375	4,641
10	Net income	89,061	61,901	31,370
	NET INVESTMENT AND EQUITY			
11	Net investment in carrier operating property and equipment plus working capital	[illegible]	540,969	655,374
12	Shareholders' and proprietors' equity	[illegible]	[illegible]	610,677
	FINANCIAL RATIOS (PERCENT)			
13	[illegible]	[illegible]	[illegible]	[illegible]
14	Return on net investment [illegible]	15.30	[illegible]	4.27
15	Return on equity [illegible]	14.4[illegible]	[illegible]	5.14
	EMPLOYEE DATA			
16	Average number [illegible]	[illegible]	[illegible]	28,783
17	Compensation [illegible]	[illegible]	[illegible]	[illegible]

[illegible]

INDEX

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